

MILL'S EPISTEMIC LIBERALISM

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ABSTRACT

PIERS NORRIS TURNER: Mill's Epistemic Liberalism
(Under the direction of Gerald Postema)

In this dissertation, I explore the shape of John Stuart Mill's political thought in light of his attention to the epistemic quality of social and political arrangements. Specifically, I argue that his classic essay *On Liberty* can be properly understood only by giving a central place to two key epistemic considerations. First, he is concerned to maintain the social and political conditions that make possible the improvement of our understanding – the conditions required for “discussion and experience”. Social progress is, to Mill's mind, largely a function of intellectual progress, which is therefore at the core of his political designs, including in *On Liberty*. Second, Mill is concerned to organize society as well as possible in the here and now toward the achievement of the general good – and a chief element of the organizational part of his political designs is to give expression to the best available expertise on social and political matters. Appreciating the relationship between the progressive and organizational elements of his view allows us to come to a more satisfactory understanding of the liberty (or harm) principle as a part of the argument of *On Liberty*. As will become clear in later chapters, on the interpretation I prefer: (1) the main argument of *On Liberty* is an argument about the conditions required for social progress, which is driven to a great extent by intellectual progress; (2) within those progressive conditions, Mill justifies his liberty principle – according to which

social interference can be warranted only with regard to “harm to others” – as an organizational principle designed to give expression to expertise in decision-making.

To all my family, but especially Abby

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Chapter One

*Science, Society, and Rousseau*¹

Section 1: Introduction

In 1823, while still a teenager, John Stuart Mill gave a talk entitled “The Utility of Knowledge” to the Mutual Improvement Society, on the subject of whether “[t]he revival of art and science has contributed to promote morality” (CW XXVI, 258). He divides its positive contribution into two related parts – the increase and diffusion of wealth, and the increase and diffusion of knowledge – and concludes that the chief positive result of the “necessaries and comforts” afforded by science is the “inestimable benefit of leisure,” which “forces” individuals to reflect on moral matters:

[Leisure] forces them to seek society, it forces them to seek education. Each working man becomes himself better qualified to distinguish right from wrong, while each knows that he is under the constant surveillance of hundreds and thousands equally instructed with himself. Thus does the improvement of the physical sciences, by increasing and diffusing wealth, indirectly tend to promote morality...” (Ibid., 259)²

By encouraging the (further) development of social awareness and education, leisure provides means which, for Mill, are essential if we are to improve our understanding of

¹Thanks to Jerry Postema, Geoff Sayre-McCord, Tom Hill, and Doug MacLean for comments on earlier drafts of this chapter.

²Citations of Mill’s *Collected Works*, marked by *CW*, volume number, and page number, refer to *The Collected Works of John Stuart Mill*, ed. J.M. Robson (Toronto: University of Toronto Press, London: Routledge and Kegan Paul, 1963-1991), 33 vols.

how to achieve the general happiness.³ And this improved understanding of how to achieve the good, by providing the basis to rationally criticize and revise existing social arrangements, is one of the main instruments of social progress:

Knowledge has done much, but it has not yet done all... We cannot therefore be surprised that those who are interested in misgovernment should raise a cry against the diffusion of knowledge on the ground that it renders the people dissatisfied with their institutions. When despotism and superstition were in their greatest vigour the same cry was raised, and for the same reason. Knowledge has triumphed. It has worked the downfall of much that is mischievous. It is in vain to suppose that it will pass by and spare any institution the existence of which is pernicious to mankind. (CW XXVI, 261).

Putting these passages together, Mill claims: (1) that the revival of the physical sciences provides – among other things – greater opportunity for the improvement of our understanding concerning the design of our social and political arrangements; (2) that this improvement in our understanding has been, and remains, a vital element in the pursuit of the general good. Physical science makes possible moral and political science. Moral and political science issue (ideally) in “useful” knowledge that bears directly on how to achieve the general good, and the possession of such knowledge must – as a rule – be thought helpful in trying actually to achieve it.⁴ What we find here, then, is that, even at

³Mill echoes Hobbes’s observation that leisure is the “mother of philosophy”. Hobbes was addressing the failure of the “savages of America” to spontaneously develop the reasoning that might have helped them improve their lives:

...there have been diverse true, general, and profitable speculations from the beginning, as being the natural plants of human reason. But they were at first but few in number; men lived upon gross experience; there was no method; that is to say, no sowing nor planting of knowledge by itself, apart from the weeds and common plants of error and conjecture. And the cause of it being the want of leisure from procuring the necessities of life, and defending themselves against their neighbours, it was impossible, till the erecting of great Commonwealths, it should be otherwise. Leisure is the mother of philosophy; and Commonwealth, the mother of peace and leisure. Where first were great and flourishing cities, there was first the study of philosophy. (*Leviathan*, XLVI, ¶ 6)

⁴“...useful knowledge is that which teaches us how to seek what is good and avoid what is evil; in short how to increase the sum of human happiness” (CW XXVI, 258). Mill implies that some knowledge is not

an early age, Mill paid special attention to the moral and political consequences of the *epistemic* or knowledge-conducive qualities of social and political conditions.

In the chapters that follow, I explore the shape of Mill's political thought in light of his attention to the epistemic quality of social and political arrangements. Specifically, I will argue that his classic essay *On Liberty* can be properly understood only by giving a central place to two key epistemic considerations. First, he is concerned to maintain the social and political conditions that make possible the improvement of our understanding – the conditions required for “discussion and experience”. As has already been suggested, social progress is, to Mill's mind, largely a function of intellectual progress. This is at the core of the progressive part of Mill's political designs, and his core concern in *On Liberty* is with progress. Second, Mill is concerned to organize society as well as possible in the here and now toward the achievement of the general good – and a chief element of the organizational part of his political designs is to give expression to the best available expertise on social and political matters. Appreciating these two elements of his view allows us to come to a more satisfactory understanding of the liberty (or harm) principle as a part of the argument of *On Liberty*.

As will become clear in later chapters, on the interpretation I prefer: (1) the main argument of *On Liberty* is – as Mill attests in his *Autobiography* – an argument about the conditions required for social progress, which is driven to a great extent by intellectual progress; (2) within those progressive conditions, Mill then justifies his liberty principle – according to which social interference with individual liberty can be warranted only by appeal to “harm to others” – as an organizational principle designed to

useful – at least not directly useful – in this way. As we shall see below, Mill means to reject the claim that the possession of useful knowledge could be detrimental – overall – to our actually achieving the good.

give expression to expertise in decision-making. Mill's early and ongoing attention to the social and political conditions required for intellectual progress is the subject of Chapters 1 and 2. The present chapter focuses on the nature of Mill's early disagreement with Rousseau over the value of science and philosophy to society. Chapter 2 examines Mill's progressive argument and its role in his justification of key liberal social and political arrangements. His account of expertise as an aspect of his organizational designs is then taken up in Chapters 3 and 4. Chapter 3 focuses on Mill's institutional designs, notably in his *Considerations of Representative Government*, to reveal the outline of his organizational thinking. Chapter 4 then applies this insight to *On Liberty*, by focusing on a particular problem that seems to plague standard interpretations of that work. Chapter 5 then considers what would seem to be a problem (Mill's anti-moralism) for the interpretation of *On Liberty* that I prefer.

Because my interpretation of *On Liberty* is non-standard, a good part of what follows will be taken up with demonstrating and exploring Mill's long-standing attention to the considerations cited above in his other writings. In doing so, my hope is that the claims I make about *On Liberty* will appear as simply natural extensions of Mill's approach to political design.

Section 2: The Utility of Knowledge

In "The Utility of Knowledge," Mill partly takes himself to be offering a response to the argument found in Rousseau's *First Discourse* (and some other writings), that the pursuit of the arts, science, and philosophy is morally detrimental to society.⁵ As we shall

⁵My discussion of Rousseau is limited largely to the *First Discourse* and related replies and responses. His political work goes well beyond the claims in those pieces, but Mill's comment on Rousseau in the present

see, Rousseau argues that engaging in science and philosophy contributes to the loss of martial virtues and physical vigor, to the waste of time pursuing false ideas, to the elevation of learnedness over virtue, to the emotional detachment of its practitioners, and to the loss of our inborn common sense about how to live virtuously. In the *First Discourse*, he imagines our descendents saying it would be better to give up the arts, science, and philosophy altogether: “Almighty God, you who hold all Minds in your hands, deliver us from our Father’s Enlightenment and fatal arts, and restore us to ignorance, innocence, and poverty...”⁶

Mill’s initial response to Rousseau is to accuse him of sophistry. He argues that Rousseau fails to distinguish between the pursuit of knowledge in general, and the pursuit of “useful” knowledge that bears directly on how to achieve the general happiness. On Mill’s interpretation, Rousseau thereby conceals the fact that the pursuit of useful knowledge has had, overall, an immensely positive effect on moral and political life. Moreover, once this has been admitted, it should also, as we saw, inform our moral estimation of the “comforts and conveniences” provided by the physical sciences:

The beneficial effects produced upon the human mind and upon the structure of society by the revival of science and by the cessation of feudal darkness have been so obvious that there is scarcely room for the smallest discussion. No one, I apprehend, would insult the understanding of this Society by reviving the ascetic sophistry of the fanatic Rousseau by maintaining that what are called the comforts and conveniences of life are in fact neither comforts nor conveniences, and add not the smallest particle to human happiness; that the progress of civilization is in fact the progress of barbarism and that the Hurons and the Iroquois are the happiest and the most enlightened of mankind. (CW XXVI, 257)

case seems to be limited to them. Rousseau’s *First Discourse* is on the topic: “Whether the restoration of the Sciences and Arts has contributed to the purification of morals” (D1, 1; for citation key see fn. 10).

⁶Jean-Jacques Rousseau, *“The Discourses” and Other Early Political Writings*, Vol. I, ed. Victor Gourevitch (New York: Cambridge University Press, 1997), p. 26.

Mill then considers a second candidate reason for Rousseau's rejection of science and philosophy: one might claim that knowing how to achieve the good (i.e., of "how to increase the sum of human happiness") is not helpful in actually achieving the good. Mill finds the objection absurd:

...to say that knowledge can be an enemy to happiness is to say that men will enjoy less happiness, when they know how to seek it, than when they do not. This reasoning is on a par with that of anyone who should refuse when asked to point out the road to York, saying that his inquirer would have a much better chance of reaching York without direction than with it. It is impossible then to suppose that anyone should get up in this Society and maintain that knowledge in the abstract is mischievous. Arguments may indeed be directed against much of what passes current under the name of knowledge to show that it is not really knowledge but prejudice, and is therefore not favourable but unfavourable to happiness. But this is one of those cases where the reason of the exception proves the truth of the general rule. It is precisely because knowledge is useful that prejudice is mischievous. (CW XXVI, 258; emphasis added)

Mill thus suggests that two charges might stick to Rousseau: first, that he engages in a bit of sophistry with regard to "knowledge," thereby concealing the fact that some "useful" knowledge has undoubtedly had important beneficial social effects; second, that he denies that even useful knowledge is really conducive to achieving the good. But neither of these strike me as correct.

As we shall see, Rousseau does not deny that "useful" knowledge is a key means to achieving the good, but only that the pursuit of it through science and philosophy has such detrimental side effects as to make the pursuit not worth the cost. But then, if it is the particular sort of pursuit, and not the possession, of knowledge that exercises Rousseau, it would also be wrong to accuse him of concealing the value of "useful" knowledge. His argument applies to the pursuit of any and all knowledge – "useful" or otherwise – via scientific and philosophical means. Mill's diagnosis seems to miss the mark.

But there does seem to be an important difference in their stance toward science and philosophy that deserves examination. Interestingly, we shall see in a later section that Mill accepts a significant portion of Rousseau's account of the detrimental effects of "civilization" (of which science and philosophy are, for both men, an important part).⁷ However, Mill believes that the improvement of our understanding due to science and philosophy – which is vital to the improvement of our social and political circumstances – ultimately outweighs and ameliorates those other detrimental effects. The question arises: if Rousseau also regards knowledge as a key means to the good, as I have suggested, then why does he not similarly value the contribution of science and philosophy to the improvement of our understanding?

I want to offer a speculative reconstruction of Mill's antipathy to the argument of the *First Discourse*, one merely hinted at in his early essay that we have been discussing, but the shape of which becomes clearer in his later work, especially *On Liberty*. On this reconstruction, he should be understood to regard Rousseau's call to renounce science and philosophy as an assumption of epistemic infallibility. For Mill, for whom critical discourse is central to social progress as an engine of intellectual development, almost any proposal to silence critical discourse commits the proposer to the claim that he has the standing to decide and enforce some matter going into the future, even if in that future the corrective mechanism of critical discourse no longer operates. But fallible human beings cannot justify such a claim. Thus, as he argues most famously with regard to censorship of the expression of opinion (in *On Liberty*), "All silencing of discussion is an assumption of infallibility" (CW XVIII, 229).

⁷I discuss this in chapter 2.

This argument has not impressed many commentators, and has been deemphasized as a component of the argument of *On Liberty*. But, I believe, it is extremely important to Mill's way of thinking about the limits of political authority. We shall see that the argument is also sometimes misconstrued. But the present point is that Mill is acutely aware of attempts to undermine the social conditions required for intellectual development, and rejects those attempts on the grounds that they necessarily⁸ involve their proponents in taking up (consciously or not) an epistemic position that exceeds human capability. As early as 1825, in his commentary on the report of the proceedings of Parliament concerning Ireland, we find Mill criticizing the Duke of York for expressing such confidence in his own views as to suggest that no further word on that matter could be required: "It may be questioned, however, whether it would have been in any way discreditable to his Royal Highness, if, in testifying his attachment to the opinion he had chosen, he had remembered that even the Heir to the Throne is not infallible, and that it was just possible, that the opinion, to which he was thus solemnly vowing an eternal adherence, might be *wrong*" (CW VI, 84).⁹ For Mill, "vowing an eternal adherence" to any opinion is what rankles. And by 1828 we find Mill making his case against those who would silence critical discussion in terms familiar to readers of *On Liberty*. He argues in "The Church" (1828) that the rejection of "discussion" and the "spirit of universal enquiry" by the established clergy involves "a considerable stretch of

⁸Mill allows a kind of exception, in cases when undermining those conditions in the short term is required for protecting them for the long-term, as – perhaps – when the existence of society itself is at stake.

⁹For a later example, consider Mill's comment on Comte's proposal that most books be destroyed and that (in Mill's recapitulation) "all species of animals and plants which are useless to man should be rooted out": "As if any one could presume to assert that the smallest weed may not, as knowledge advances, be found to have some property serviceable to man. ...[Comte] does not imagine that he actually possesses all knowledge, but only that he is an infallible judge what knowledge is worth possessing" (CW X, 357).

arrogance” including the denial that “there is still room for improvement” in their beliefs (CW XXVI, 425, 426).

I want to suggest that Rousseau’s rejection of science and philosophy in the *First Discourse* would have affected Mill much as the attempt to censor the expression of opinion by the established clergy. If I am right, then it is reasonable to think that the absurdity Mill found in Rousseau’s *First Discourse*, but which he was unable to express fully in “The Utility of Knowledge,” is the assumption of infallibility. What is surprising is the extent to which Rousseau (in the *First Discourse* and related writings) accommodates this charge.

We can begin to see this epistemic difference at work in part of Mill’s critique of Rousseau in “The Utility of Knowledge”:

Were such a reasoner [one who denies that the revival of science has contributed to the general happiness] to arise I should ask him by what authority he claims to know better than A, B and C what constitutes the happiness of A, B and C. I should maintain that what all men have uniformly considered as comforts and conveniences cannot be otherwise than comforts and conveniences, and I should require him who considers knowledge as standing in the way of happiness to go and legislate for those savages upon whose blissful state of ignorance he would have an opportunity of trying his skill without those obstacles which he finds in the knowledge of this comparatively enlightened country.

Mill asks “...by what authority he claims to know better than A, B and C what constitutes the happiness of A, B and C.” This question should evoke two ideas that Mill expresses, in more detail, in *On Liberty*: (1) that fallible knowledge claims gain epistemic authority only through discussion and experience; (2) that within the context of discussion and experience, a person’s authority to decide how best to order social affairs in some domain depends in part on his relative expertise. On the first point, he writes:

The beliefs which we have most warrant for, have no safeguard to rest on, but a standing invitation to the whole world to prove them unfounded. If the challenge

is not accepted, or is accepted and the attempt fails, we are far enough from certainty still; but we have done the best that the existing state of human reason admits of; we have neglected nothing that could give the truth a chance of reaching us: if the lists are kept open, we may hope that if there be a better truth, it will be found when the human mind is capable of receiving it; and in the meantime we may rely on having attained such approach to truth, as is possible in our own day. This is the amount of certainty attainable by a fallible being, and this the sole way of attaining it. (CW XVIII, 232)

The authority of our beliefs is earned and sustained in the course of ongoing critical examination and challenge by new ideas. Because the means to achieving the general happiness are neither obvious nor known *a priori*, Mill in *On Liberty* identifies the commitment to the growth of “useful” knowledge with the commitment to maintain the conditions of “discussion and experience” (CW XVIII, 231) in which (a) new ideas and “experiments of living” can develop and (b) individuals engage critically with others, especially with those who have opinions and “modes of life” different from their own. Thus, if one is committed to the proposition that knowledge is a key means to achieving the good, then one is committed to the experimental and critical conditions of discussion and experience:

...the same reasons which show that opinion should be free, prove also that he should be allowed, without molestation, to carry his opinions into practice at his own cost. That mankind are not infallible; that their truths, for the most part, are only half-truths; that unity of opinion, unless resulting from the fullest and freest comparison of opposite opinions, is not desirable, and diversity not an evil, but a good, until mankind are much more capable than at present of recognizing all sides of the truth, are principles applicable to men’s modes of action, not less than to their opinions. (Ibid., 260)

On the second point, concerning relative expertise, Mill writes in *On Liberty* that “with respect to his own feelings and circumstances, the most ordinary man or woman has means of knowledge immeasurably surpassing those that can be possessed by any one else,” (CW XVIII, 277). Thus, in the example above, Mill suggests we should conclude

that within the context of the experimental and critical conditions of discussion and experience, individuals A, B, and C – though fallible – are likely better placed than anyone else to decide how to pursue their own good. On what grounds could Rousseau reject this conclusion?

Rousseau argues that there is a kind of infallible or near-infallible knowledge of how to live virtuously ingrained in our consciences, which he also calls “common sense” (“Preface to Narcissus” (PN), 105): “We have a guide within, much more infallible than all the books, and which *never* forsakes us when we are in need” (“Observations” (O), 37; emphasis added).¹⁰ We might call this knowledge “non-inquisitive” because its possession and authority are in no way dependent on the processes of discussion and experience: He writes: “A heifer need not study botany to learn to pick over its hay...” (“Last Reply” (LR), 85). For most people, the pursuit of science and philosophy has obscured common sense, or non-intuitive knowledge, about how to live virtuously. What Mill counts heavily in favor of science and philosophy – their contribution to the growth of knowledge – is thereby undermined on Rousseau’s picture: “[T]he more new knowledge we accumulate the more we deprive ourselves of the means of acquiring the most important knowledge of all...” (*Second Discourse* (D2), 129).

Importantly, however, Rousseau allows that although science and philosophy tend to obscure common sense for most people, a few true philosophers may be led by reflection to understand what they already knew by heart. At that point, as he seems to

¹⁰Unless otherwise noted, all page references to Rousseau’s work are to Jean-Jacques Rousseau, *The First and Second Discourses, Together with the Replies to Critics and Essay on the Origin of Languages*, ed. and trans. Victor Gourevitch (New York: Harper Collins, 1988). “D1” = “Discourse on the Sciences and Arts or First Discourse”; “D2” = “Discourse on the Origin and Foundations of Inequality Among Men or Second Discourse”; “G” = “Letter to Grimm”; “LR” = “Last Reply”; “NR” = “Letter about a New Refutation”; “O” = “Observations [to Stanislas, King of Poland]”; “PB” = “Preface of a Second Letter to Bordes”; “PN” = “Preface to Narcissus”.

assert in the *First Discourse*, those “true” philosophers – and it would be hard to imagine that he does not include himself in their ranks – regain their common sense or conscience:

O virtue! Sublime science of simple souls, are so many efforts and so much equipment really required to know you? Are not your principles engraved in all hearts, and is it not enough, in order to learn your Laws, to return into oneself and, in the silence of the passions, to listen to the voice of one’s conscience? That is true Philosophy, let us know how to rest content with it...” (D1, 27).

He adds: “...we still have some true Philosophers eager to recall to our own hearts the laws of humanity and of virtue” (PN, 102). Non-inquisitive knowledge is not, then, hidden from all “civilized” individuals – it is simply drowned out for *most* people by the static of social life, including science and philosophy. If this is correct, then Rousseau can claim - in Mill’s example – to have a greater “authority” with regard to the good of A, B, and C than A, B, and C have themselves. And he can argue – with the near-infallible authority of conscience (“which never forsakes us when we are in need”) – that engagement in science and philosophy has been morally pernicious.

Here, then, is a reconstruction of Mill’s opposition to Rousseau on science and philosophy. Mill rejects near-infallible, non-inquisitive knowledge and, with it, Rousseau’s standing to call for the elimination of the only means by which our knowledge, according to his own view, may continue to improve. On Mill’s view, whatever we may come to believe through “discussion and experience,” we never have the standing to undermine those conditions that alone provide the “hope that if there be a better truth, it will be found when the human mind is capable of receiving it”. By the time of *On Liberty*, Mill’s thought fully incorporates the idea that the growth of knowledge, which is so important to social progress, itself requires a certain (liberal) social order,

including free speech and “experiments of living,” that can only be undermined in cases when apparently restrictive action in the short term is required to preserve the means of open intellectual development in the long-term. This is, as we shall see in the next chapter, a central part of his commitment to the “progressive principle” (CW XVIII, 272), according to which the primary aim of all political and social order is to supply what is necessary for the intellectual and moral improvement of the individuals living within society. To claim the standing to undermine those progressive conditions is to assume infallibility – a charge which Rousseau seems to oblige by some of his own remarks about “true philosophers”.

In the remainder of this chapter, I want to explore the above claims in greater detail. I first examine a set of arguments, primarily from Rousseau’s *First Discourse*, but drawing also on his replies and letters, as well as his *Second Discourse*, in which he condemns science and philosophy on the grounds that they have a corrosive effect on personal and social morality.¹¹ In doing so, we can come to appreciate a challenge concerning knowledge and politics with which Mill grappled at an early age, his response to which occupies – as I have already tried to suggest – a central place in his later political writings.

Section 3: Rousseau Against Science and Philosophy

Rousseau’s *First Discourse* was written for, and won, an essay competition arranged by the Academy of Dijon in 1750 on this question: “Whether the restoration of the Sciences and Arts has contributed to the purification of morals” (D1, 1). Rousseau’s answer was that the revival of the arts and sciences not merely failed to contribute to the

¹¹I’d like to thank Bernie Boxill for the suggestion to study Rousseau’s *First Discourse*.

purification of morals, it had contributed significantly to the *corruption* of morals. Part I of his essay attempts to establish, through historical examples, that all societies with flourishing arts and sciences have been vicious. Part II then offers an explanation of the conduciveness of the arts and science to vice.¹²

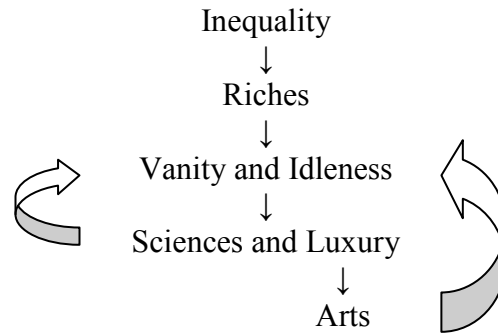
Rousseau's general claim against science and philosophy, elaborated in his replies to critics, is that there is a tight causal connection between the rise of scientific inquiry and the decline of individual and, especially, social morality: "...a people that is both virtuous and cultivates the sciences, has never been seen" (LR, 84). He writes that "morals have deteriorated in proportion as a taste for study and letters has spread among them" and that this is a "necessary connection" (PN, 101), by which he seems to have in mind just the thought that, given certain earthly conditions, there cannot be a society in which study and widespread virtue coincide.

In Rousseau's more famous *Second Discourse*, we encounter his conviction that man is naturally good (D2, 163). Though ignorant in some respects, natural man is instinctively inclined to virtuous behavior, and virtue is important above all else. Society corrupts man by its introduction of inequalities in wealth and esteem, which lead people to value talents over virtue and foster practices of flattery and deceit. The *First Discourse* shares this perspective and addresses, first, the role of learning and refinement in man's depravation and, second, whether the continued advancement of science and philosophy would restore human virtue or simply undermine it further. What, then, is the moral value of the Enlightenment?

¹²"After having devoted the first Part of my Discourse to proving that these things had always gone together, I spent the second showing that one was indeed dependent on the other" (Letter to Grimm" (G), 57).

Rousseau's answer is, it would appear, unequivocal: "...our souls have become corrupted in proportion as our Sciences and our Arts have advanced toward perfection... Virtue has been seen fleeing in proportion as their light rose on our horizon, and the same phenomenon has been observed at all times and in all places" (D1, 7). The furtherance of science would only further deteriorate our morals. In his "Observations," Rousseau offers the following "genealogy": inequality ("the first source of evil") gives rise to rich and poor (which are "relative" ideas); riches in turn give rise to vanity and idleness, which give rise to science and to luxury (which "corrupts everything"); luxury then gives rise to the arts (O, 45-6; clarified in LR, 67). This genealogy may give the impression that the *real* corrupting influences are inequality, riches, idleness and luxury, and that the influence of the arts and sciences on the deterioration of morals is relatively inconsequential. But this would leave mysterious Rousseau's strong antipathy to the arts and sciences themselves. In fact, for Rousseau, though the arts and sciences are born of vanity, idleness, and luxury, they feed back into a loop of corruption by inducing even greater concentrations of vice in society: "...the sciences corrupt morals, render men unjust and jealous, and cause them to sacrifice everything to their self-interest and vainglory..." ("Letter about a New Refutation" (NR), 91). The arts and sciences, given an inch, take a mile. Before their rise, Rousseau writes, "[h]uman nature was, at bottom, no better" (D1, 6), but their introduction tilts the moral scales: "Sciences develop the vices, which were previously outweighed by our virtues" (LR, 73n). Here is a partial diagram of the causal pathways:

Figure 1. *Causes of Corruption in Society*



Let us now look more closely at why vice “must result” from the progress of the sciences (D1, 13). Rousseau offers at least six observations to support his contention.

1. *Loss of time.* “[T]he first injury they necessarily inflict on society,” he writes, is “the irreparable loss of time.” People cannot be doing good while they are studying or reflecting. Rousseau sharpens his point by introducing a perhaps contentious principle: “[i]n politics, as in ethics, not to do good is a great evil, and every useless citizen may be looked upon as a pernicious man” (D1, 15). Inquiry takes up time in which virtuous actions might be performed. Fulfilling one’s duties leaves no time for “leisure for frivolous speculations” and, so, “...no honest man can ever boast of leisure as long as good remains to be done...” (PN, 102). To the claim that at least the sciences do tend toward truth, even if progress is slow and intermittent, Rousseau responds, “[i]f the Sciences rarely achieve their goal, it only means that much more time will be wasted than well spent” (LR, 71). And if science is taken to be merely a method of discovery, its idleness is inherent, for it then offers only technique but no direction: “...even if it were true that we have discovered the best methods, the greater part of our labors would still be just as ridiculous as those of a man who, because he is confident of being able to work

exactly to a plumb line, tried to dig a well all the way to the center of the earth” (LR, 71). And this, presumably, would be true of inquiry into how to promote virtue.

2. *Abuse of time.* Rousseau’s second line of attack further develops the thought that the learned “do evil while talking about wisdom” (PN, 99). Worse than loss of time, “these vain and futile declaimers” are guilty of “abuse of time” when they “go off in all directions, armed with their deadly paradoxes, undermining the foundations of faith and annihilating virtue” (D1, 16). They do not merely fail to do good, they positively cause damage. They find notions of God and country to be quaint, and they are “enemies of public opinion”¹³ (D1, 16). The value of public opinion in Rousseau’s *First Discourse* is somewhat obscure. As a critic of society, he can hardly claim that what is good is *entirely* or *simply* a matter of custom or public opinion, though there are certainly strong traditionalist elements in his writing. But the tendency of science to encourage exploration in a variety of directions, he argues, produces more error than truth, which puts us at moral risk¹⁴: “How many dangers! How many wrong roads in the investigation of the Sciences! How many errors a thousand times more dangerous than the truth is useful, have to be overcome in order to reach it? The drawbacks are manifest: for falsehood admits of an infinite number of combinations; but truth has only one mode of

¹³This is a complicated claim because Rousseau has the view that morality is (somehow) socially established, and so opposing tradition or custom or “public opinion” is almost by definition morally damaging. Of course, his own “enthusiasm for truth” leads Rousseau to challenge prevailing views. What is good cannot, then, be *entirely* or *simply* a matter of public opinion. We might conclude provisionally that Rousseau takes opposition to custom or public opinion to be *prima facie* or defeasibly immoral.

¹⁴Allen Buchanan has developed the idea that false beliefs place us at “moral risk”. See his “Social Moral Epistemology.” *Social Philosophy & Policy*, vol.19, 2 (Summer 2002).

being” (D1, 14-15).¹⁵ And, as we shall see, for Rousseau, the important truths are available to conscience prior to inquiry.

3. *Loss of martial virtues.* The “vain and futile” work of idlers and abusers saps not only the mind, but also the body and, therefore, the virtues that depend on physical vigor. Rousseau holds in high esteem what he calls the “martial virtues,” especially courage. Rousseau’s repeatedly-expressed regard for ancient Sparta suggests that the martial virtues essential to living virtuously cannot in general coexist with science and philosophy: “... the study of the sciences is much more apt to soften and effeminate men’s courage than to strengthen and animate it” (D1, 19). We harm ourselves by not recognizing how our mental and physical health are related: “[w]ork in the study causes men to grow frail. It weakens their temperament, and the soul’s vigor is difficult to preserve once the body’s vigor is lost. Study uses up the machine, exhausts minds, destroys strength, enervates courage, and this alone shows us clearly enough that it is not made for us...” (PN, 103).

One might suggest that the development of medicine (as part of science) would at least mitigate some of the bad effects due to physical weakness. But, in one of Rousseau’s replies and in his *Second Discourse*, even the value of medical science is denied, on two fronts. First, the doctor’s greater knowledge only causes him increased stress, since “knowledge... reveals many more dangers to us than it reveals means to guard against them” (LR, 85). Second, he denies the contribution of medical science to extending life, because the medical sciences rise with society, and with society come a host of new illnesses and dangers: “I shall ask whether there is any solid evidence to

¹⁵In a different essay, he writes (in a tortuous passage): “...it is useful for men... not to be in error, and it is an error... to fear error less than ignorance” (PB, 114).

conclude that in Countries where this art is most neglected the average life span is shorter than in those where it is cultivated with the greatest care; how could it be, if we inflict more ills on ourselves than Medicine can provide Remedies!” (D2, 144-5). These ills include “excesses of every kind,” in idleness and work, in the easy gratification of our desires and appetites, in “excessively exotic dishes”, and in the “bad food” and binges of “the Poor,” not to mention the psychological stress associated with our realization that “most of our ills are of our own making, and that we would have avoided almost all of them if we had retained the simple, uniform and solitary way of life prescribed to us by Nature” (D2, 145).

It is important to keep clear the distinction between the effect of study or inquiry on particular inquirers and the consequences of science and philosophy for society in general. Rousseau allows that certain great men may combine study and virtue – he even acknowledges that their exceptional reasoning skills may help them discover the same knowledge of virtue that natural man knows instinctively. What is more, their exceptional talents – when put “to good use” by a virtuous ruler – might redound to the benefit of society. But this is not to undo the moral damage done by science and philosophy in the first place, nor is it to suggest that developing a taste for study won’t corrupt the typical person. And so it remains that we ought not to make science publicly credible. As I will explore in greater detail, the argument so far is ambiguous between (1) banishing science and philosophy from social life, and (2) reserving it for an elite –i.e., banishing all but the elite from the domain of science/philosophy.

4. *Valuing superficialities over virtue.* This brings us to Rousseau’s fourth objection to the sciences: that a “taste” for study causes us to value “talents” instead of

virtue (see PN, 102). This is at the very core of the superficiality of society: “Where do all these abuses arise, if not in the fatal inequality introduced among men by the distinction of talents and the disparagement of the virtues? That is the most obvious effect of all our studies, and the most dangerous of all their consequences... Rewards are lavished upon wits, and virtue remains without honors” (D1, 22). We honor the skilled and learned over the virtuous: “Call out to our People about a Passer-by *Oh, what a learned man!* And about another *Oh, what a good man!* They will not fail to turn their eyes and respect toward the first. A third Caller is needed. *Oh, what blockheads!*” (“Letter to Grimm” (G), 57; see also LR, 76). One related problem is that the education of young people – a task placed in the hands of the learned – is likely to do more harm than good, because “...the Learned will never write as many good books as they set bad examples...” (LR, 86). He complains that “...young people are brought up at great expense to learn everything except their duties” and that “[r]ewards are lavished upon wits, and virtue remains without honors” (D1, 20, 22). Good education is still possible in which virtues themselves, and not study of the virtues, are taught (D1, 21n).¹⁶ But, in general, the development of the sciences only causes a “taste” for the esteem and rewards associated with the *signs* of learning. And this contributes to all the other vices of society.

We turn now to two further objections to the sciences, neither of which is aired in the *First Discourse* itself. These objections appear exclusively in the essays and letters he wrote subsequently to clarify and expand upon his initial essay. Both concerns merit considerably more elaboration than Rousseau provides.

5. *Mutual dependence and detachment.* The fifth objection is that the rise of the arts and sciences creates in us desires that lead us to become dependent on others, which

¹⁶See also his *Emile*.

ironically causes us to become detached from others. In order to satisfy our new desires, we find ourselves in a “position of mutual dependence.” Virtue was easier in our natural state, i.e. when we had fewer needs or wants: “[e]verything beyond the physically necessary is a source of evil” (LR, 88). Rousseau acknowledges that mutual dependence might appear to be a good thing insofar as it induces a sense of the common interest and of others’ needs. “These are certainly fine ideas..., “ he writes, “[b]ut when they are examined carefully and impartially, the advantages which they seem at first to hold out prove to be open to considerable criticism” (PN, 105). In fact, a state of mutual dependence causes us to become “deceitful, jealous, and treacherous” (LR, 73). And so, our self-interest (to satisfy our newfound desires) has “placed men in a position where they cannot possibly live together without obstructing, supplanting, deceiving, betraying, destroying one another... a state of affairs in which everyone pretends to be working for the others’ profit or reputation, while only seeking to raise his own above them and at their expense” (PN, 105). The problem is not, then, with mutual dependence in itself, but with the characteristic way that this dependence affects our interactions with each other in society. Philosophy, rather than helping us to feel connected to those around us, contributes to the loss of fellow-feeling. In his *Second Discourse*, he argues that philosophy – by its focus on reason –corrupts one’s natural sympathetic sentiments, because the philosopher takes an abstract, detached view of them: “It is Philosophy that isolates him; by means of Philosophy he secretly says, at the sight of a suffering man, perish if you wish, I am safe... Savage man has not this admirable talent; and for want of wisdom and of reason he is always seen to yield impetuously to the first sentiment of Humanity.”¹⁷

¹⁷Jean-Jacques Rousseau, “*The Discourses*” and *Other Early Political Writings*, Vol. I, ed. Victor

6. *Revealing of contemptuous nature.* Rousseau's sixth criticism of science is contained in just one passage: "...continued reflection about mankind, continued observation of men, teach the Philosopher to judge them at their worth, and it is difficult to be particularly fond of what one holds in contempt" (PN, 104). Not only does science (or inquiry generally) corrupt us, but it then provides a means by which we may discover our corruption! One might imagine that the identification of human vice would be the first step on the path to moral redemption. But, Rousseau argues, its real effect is to foster one's vanity and pride in proportion to one's contempt for others. This effect should not be discounted: "[a] taste for philosophy loosens all the bonds of esteem and benevolence that tie men to society, and this is perhaps the most dangerous of the evils it engenders" (PN, 104).

Rousseau's opposition to science and philosophy is total: "Science is not suited to man in general... Reflection only makes him unhappy without making him better or wiser... Study corrupts his morals, affects his health, ruins his temperament, and often spoils his reason: even if it did teach him something, I would find that a rather poor compensation" (PN, 107). And: "...it is folly to pretend that the chimeras of Philosophy, the errors and the lies of the Philosophers can be good for anything" (LR, 66).

Mill, for his part, accepts some of Rousseau's critique, but – crucially – he denies the claim that study "spoils [our] reason". In his essay "Civilization" (1836), Mill acknowledges aspects of the deleterious tendencies Rousseau mentions. Concerning the problem of mutual dependence in society:

One of the effects of a high state of civilization upon character, is a relaxing of individual energy... As civilization advances, every person becomes dependent, for more and more of what most nearly concerns him, not upon his own

Gourevitch (New York: Cambridge University Press, 1997), p. 153.

exertions, but upon the general arrangements of society. In a rude state, each man's personal security, the protection of his family, his property, his liberty itself, depend greatly upon his bodily strength and his mental energy or cunning: in a civilized state, all this is secured to him by causes extrinsic to himself. (CW XVIII, 129)

This contributes to a "mildness of manners," so that what remains to "call forth energy of character" are merely matters of choice (not of necessity), including "wealth" or "personal aggrandizement" and "the passion of philanthropy, and the love of active virtue" (CW XVIII, 129-130). Mill also argues that in civilized society, there is much less familiarity with, and ability to deal with, pain. This is good in some respects, but it contributes to a decline in certain "martial" virtues, as Rousseau called them. The following seems almost to have been lifted from Rousseau:

To most people in easy circumstances, any pain, except that inflicted upon the body by accident or disease, and upon the mind by the inevitable sorrows of life, is rather a thing known of than actually experienced... The consequence is that, compared with former times, there is in the more opulent classes of modern civilized communities much more of the amiable and humane, and much less of the heroic. The heroic essentially consists of being ready, for a worthy object, to do over and to suffer, but especially to do, what is painful or disagreeable: and whoever does not early learn to be capable of this, will never be a great character. There has crept over the refined classes... a moral effeminacy, an inaptitude for every kind of struggle. They shrink from all effort, from everything which is troublesome and disagreeable... But heroism is an active, not a passive quality, and when it is necessary not to bear pain but to seek it, little needs to be expected from the men of the present day. (CW XVIII, 131)

Though Mill argues that civilization – by which he means, roughly, cooperative society – is better than the absence of civilization, he allows that, unchecked, it can have ill effects of just the sort that Rousseau enumerates. There is an over-focus on personal aggrandizement and a decline of courage and other heroic virtues. There is also, Mill admits, too much attention to superficialities: "For the first time, arts attracting public attention form a necessary part of the qualifications even of the deserving: and skill in

these goes farther than any other quality towards ensuring success” (CW XVIII, 133). In an essay on “Perfectibility” in 1828, Mill writes that public opinion tends to favor the “rewards” of wealth and personal advantage over those of “high intellectual and moral excellence” (CW XXVI, 431). And because the individual in society becomes increasingly dependent on the opinion of others, he “is lost and becomes impotent in the crowd” (CW XVIII, 136). The larger this superficial society grows, the greater the “weakening of the influence of superior minds over the multitude, the growth of charlatanerie, and the diminished efficacy of public opinion as a restraining power” (CW XVIII, 135).

Must we, then, accept Rousseau’s diagnosis? Can these problems, in Mill’s words, “only be avoided by checking the diffusion of knowledge, discouraging the spirit of combination, prohibiting improvements in the arts of life, and repressing the further increase of wealth and production?” Mill answers: “Assuredly not” (CW XVIII, 135). In the next chapter, we turn in greater detail to the role of science and philosophy in Mill’s account of the conditions of progress in a civilized society, which is so central to his political philosophy. But here, we might note that, for Mill, what promises to ameliorate the negative tendencies of civilization is largely the improvement of our understanding, and the effect of such improvement on the education of the young. One great effect of the introduction of civilization is the growth of science and philosophy, which can then counteract the other tendencies of the sort Rousseau and Mill both acknowledge.

Mill and Rousseau thus differ in the overall effect of science and philosophy on society. But, Mill’s optimism with regard to science and philosophy as a means to the improvement of our understanding is vital to his project in another way: he is committed,

as we saw earlier, to the idea that the authority over time to determine social and political arrangements depends in part on the ongoing ability of critical discourse to check and correct past mistakes. Rousseau not only sees the overall effect of science and philosophy on society as a damaging, he is confident that his own judgment with regard to its overall effect is secure enough to justify undermining those very conditions that one might think alone offer the opportunity of improving it.

Section 4: Rousseau's Near-infallibilism

Recall the quotation: “[T]he more new knowledge we accumulate the more we deprive ourselves of the means of acquiring the most important knowledge of all...” (D2, 129).¹⁸ The passage appears to commit Rousseau to the view that there is a kind of knowledge (perhaps a sort of know-how) that we can have without engaging in inquiry, but which is lost as inquiry proceeds, as suggested also by the “Heifer” comment (LR, 85). Rousseau allows that some great men are capable of reasoning their way back to knowledge of virtue, who then appear to regain their common sense. Let us, then, take his claim in the quote just above to apply only for the most part, i.e., to the great majority of people, which would be enough to call the value of scientific inquiry into serious question.

What sort of knowledge is this non-inquisitive moral knowledge? It is compatible with a kind of ignorance – in fact, it seems to depend on a degree of what Rousseau calls “happy ignorance” (D1, 13): “... the time of virtue for every People, was the time of its ignorance; and that in proportion as it became learned, Artistic and Philosophic, it lost its

¹⁸Were this passage from the *First Discourse* or the replies, I would have counted it as Rousseau's seventh objection to the sciences. See also the extended block quotation below from O, 49. The underlying issue is this: how ought we to balance our current state of knowledge against the claims to further inquiry?

morals and its probity” (LR, 69). Ignorance does not *make* us good, but unlike the sciences, “ignorance is an obstacle neither to good nor to evil” (LR, 69). At one point Rousseau distinguishes between bad and good ignorance. Science leads to a kind of ignorance – ignorance of virtue – that is “ferocious and brutal” (O, 49). But good ignorance keeps us virtuous:

There is another, *reasonable sort of ignorance* which consists in restricting one’s curiosity to the scope of the faculties one has received; a *modest ignorance*, born of a lively love of virtue, and which inspires nothing but indifference toward all that is unworthy of occupying man’s heart and does not contribute to making him better; a *gentle and precious ignorance*, the treasure of a soul pure and satisfied with itself, that finds all its felicity in retreating into itself, in confirming itself in its innocence, and has no need to seek a false and vain happiness in the opinion others might have of its enlightenment: That is the ignorance I praised and which I ask heaven to grant me in punishment for the scandal I caused to the learned by my professed contempt for men’s Sciences (O, 49; emphasis added).

Good ignorance, “born of a lively love of virtue,” appears to depend on our having non-inquisitive knowledge of virtue. Early societies may have lacked sophistication, but “...it was not owing to stupidity that they preferred other forms of exercise to those of the mind” (D1, 9). Societies like early Rome were “content to practice virtue; all was lost when they began to study it” (D1, 12). Their virtue did not consist in a mindless lack of curiosity. At least, they must have possessed a sort of know-how with regard to virtue, including an ability to sense that certain paths would not conduce to virtue and to “[restrict] one’s curiosity to the scope of the faculties.” But even this sense must be more than mere instinct or hunch, for Rousseau calls it a “reasonable” ignorance (above) and elsewhere characterizes the instincts as virtues only if they are “guided by reason and managed wisely” (LR, 75). The results of trying to transcend our natural limits are devastating:

...luxury, dissoluteness, and slavery have at all times been the punishment visited upon our prideful efforts to leave the happy ignorance in which eternal wisdom had placed us. The heavy veil it had drawn over all of its operations seemed sufficiently to warn us that it had not destined us for vain inquiries... Peoples, know, then, once and for all, that nature wanted to preserve you from science as a mother snatches a dangerous weapon from the hands of her child... (DAS, 13)

How, then, do we have this non-inquisitive knowledge? As we saw earlier, it would seem to be inborn: “O virtue! Sublime science of simple souls, are so many efforts and so much equipment really required to know you? Are not your principles engraved in all hearts, and is it not enough, in order to learn your Laws, to return into oneself and, in the silence of the passions, to listen to the voice of one’s conscience? That is true Philosophy, let us know how to rest content with it...” (D1, 27). The authority Rousseau claims for his critique of science and philosophy, I have suggested, is a function of his belief that his reflections have put him in contact with “common sense” (PN, 105), i.e. the non-inquisitive knowledge that science and philosophy tend to obscure. His claim is not, I think, only that by reflection he has determined that “savage” individuals possess a knowledge that “civilized” individuals lack, or even that he has come to see through reason what “savage” individuals know by heart. It is that, having reflected on the matter, his claims now share in the authority of common sense. The aim of reason with regard to morals is just to “reestablish on different foundations” what we already know naturally by our “Heart” or “secret voice of... conscience” (Preface to D2, 133; Epistle Dedicatory of D2, 124).¹⁹ Consider his response to an anonymous reviewer, in which he explicitly rejects the need for further moral inquiry:

He [the anonymous reviewer] further says that it is good to know evil, so as to learn to shun it; and he implies that one can be assured of one’s virtue only after having put it to trial. These maxims are, at the very least, doubtful, and open to

¹⁹For Mill’s critique of common sense moral epistemology, see his discussion of Whewell’s moral philosophy, which I address in Ch. 5.

much discussion. It is not certain that in order to learn to do good one has to know how many ways there are of doing evil [or ill]. *We have a guide within, much more infallible than all the books, and which never forsakes us when we are in need.*” (O, 37; emphasis added)

The “guide within,” or conscience, is a shared faculty that directs us all alike, and it is still speaking to us, if we would only hear it.

On one hand, Rousseau recognizes the value of knowledge as a means to living virtuously, while on the other he rejects inquiry. Presumably, then, it is conscience or common sense that is lost, or lost sight of, as we begin to engage in inquiry. The secret voice within is drowned out by science and philosophy. The more we are pressed to think about falsities and superficialities, the less we can hold onto the simple truths of virtue known by heart, or conscience. But once we tune out the static of science and philosophy, the guide within approaches something like infallibility. Thus, in evaluating the degrading effects of the arts and sciences, Rousseau need only appeal to his common sense knowledge of virtue. This insulates Rousseau against a certain objection to his views, for one might have been tempted to point out that his own claims about the moral value of the arts and sciences are themselves open to reasonable disagreement, and that the resolution of that disagreement would require further inquiry. Not so, Rousseau can reply, because our near-infallible knowledge of how to live well can be acquired independent of inquiry: “a good mind needs little learning” (LR, 86).

Section 5: On Ideal Science and True Philosophers

I want to raise an issue that complicates Rousseau’s picture: the model of great men or “true philosophers”. This issue, we shall see, appears together with the distinction between science and the so-called “science” of Rousseau’s contemporaries. Does

Rousseau object to all science or just to science as it is practiced in his day? He writes, “[s]cience, taken abstractly, deserves all our admiration. The foolish science of men deserves nothing but derision and contempt” (PN, 101-2).

Let us turn first to Rousseau’s discussion of great men. His admiration for Socrates, in particular, is seemingly boundless. Socrates was among the few men to have been *both* “learned and virtuous” (LR, 66). What is more, Rousseau identifies his own argument with that of Socrates’ *Apology*: “[i]t cost Socrates his life to have said exactly the same things I am saying” (LR, 66n). And what is this common cause? It is that Socrates, like Rousseau, when given the chance to be like the learned around him, chose rather to embrace his ignorance as more virtuous: “...Socrates, speaking in Praise of ignorance! Does anyone believe that, if he were to be reborn among us, our Learned and our Artists would make him change his mind?” (D1, 11; see also NR, 94). Somewhat bizarrely, in Rousseau’s hands, Socrates’ recognition of his own ignorance does not appear as a call to further inquiry, but as an admonition against it.

Rousseau, like Socrates, is interested in distinguishing “true philosophers” from those men speciously *regarded* as philosophers, and himself adopts the term “sophist” to refer to the latter (LR, 87). Sophists, then, are those “learned” who are guilty of the many vices enumerated by Rousseau in the course of his criticism of the sciences. One vice not sufficiently discussed thus far, but which cuts to the core of Rousseau’s (and Socrates’) hostility toward the sophists, is their lack of proper regard for truth even while they claim to know it. Rousseau repeatedly expresses his own “enthusiasm for truth” (“Preface of a Second Letter to Bordes” (PB), 112). Our failure in educating students is due in part to insufficient attention paid to the value of truth : “...without being able to disentangle

error from truth, they will possess the art of making them unrecognizable to others by specious arguments” (D1, 21). He believes his own arguments to be built on “truth alone” (LR, 89) and summarizes his basic convictions thus: “Virtue, truth! I will call out incessantly; truth, virtue!” (“Letter to Raynal” (RAY), 30).

“True philosophers” are those who remain sufficiently enthusiastic about truth, who regulate their judgments by that value, and who therefore are able to remain virtuous, or at least to rediscover through reason what the heart already knows. Reasoning well is paramount for Rousseau. His replies are laced with sharp attacks on the shoddy reasoning of his critics. And, apparently in praise of reasoning, Rousseau calls it the “science that serves as the foundation of all the other sciences” (PN, 97). We are led to wonder again whether Rousseau’s opposition is to science as such or just the so-called “science” of his day.

Even Rousseau’s admiration for Socrates is complicated on this score. He suggests that men like Socrates, those “true philosophers,” do not *need* science (PN, 107). But he also acknowledges that Socrates’ primary target is the way in which inquiry into important matters is carried out (or, worse, assumed to be unnecessary) by the supposedly knowledgeable men of Athens (O, 50).²⁰ For this reason, advocates of free inquiry, such as Mill, equally claim Socrates as their model. Socrates seems to think that inquiry done right is valuable (if the dialogues accurately represent his views), and that inquiry of the sort carried out by his contemporaries is not *true* inquiry. At several points (of which we have already seen a couple), Rousseau appears to adopt a similar stance. He writes, for

²⁰At this point in his writings, Rousseau connects the criticism of extant science and philosophy with the criticism of science and philosophy themselves by noting that the latter are liable to be badly abused: “Are all things that get abused to be eliminated, then? Yes, indeed, I will unhesitatingly answer: all those that are useless; all those the abuse of which does more harm than their use does good” (O, 50).

instance: "...I cannot understand how Philosophers dare find it objectionable to be offered opportunities for discussion: what a fine love of truth, that is frightened at having the pro and con examined! In Philosophical inquiries the best way to render a sentiment suspect is to deny the opposite sentiment a hearing..." (NR, 91). There is a picture of science and philosophy, then, that is not inherently vicious – that need not involve just the shoddy reasoning of sophists: "One always believes one has said what the Sciences do when one has said what they should do. Yet the two seem to me quite different..." (O 36). On this reading, we are not surprised to find passages in which he appears to rely on an implicit distinction between true science and shoddy science, e.g., "[t]he question of whether it would be advantageous for men to have science, bears examination, even assuming that what they call by that name does deserve it..." (LR, 66-7).

Of course, allowing that Rousseau is committed to a conception of ideal science or inquiry does not settle much. Though science need not be sophistic, there remain two further questions: first, whether the typical person is capable of engaging in true science and, second, whether, if the learned carried on true science, it would be good for society in general. Rousseau is clear on both points. On the first, he writes:

I acknowledge that there are a few sublime geniuses capable of piercing the veils in which the truth wraps itself, a few privileged souls able to withstand the folly of vanity, base jealousy, and the other passions to which a taste for letters gives rise. The small number of those who have the good fortune of combining these qualities are the beacon and the honor of mankind; only they should properly engage in study for the good of all... (PN, 107)

...it is good that there be Philosophers, provided the People do not pretend to be Philosophers. (LR, 72)

And on the second point:

If celestial intelligences cultivated the sciences, only good would come of it; I say as much about the great men made to guide others. Socrates, learned and virtuous,

did mankind honor; but the vices of vulgar men poison the most sublime knowledge and render it pernicious to Nations (LR, 66).

One of the great drawbacks attending the cultivation of Letters is that, for a few men they enlighten, they corrupt an entire nation at a pure loss” (G, 55).

...Science suits a few great geniuses; but... it is always harmful to the Peoples that cultivate it (G, 58).²¹

The last three quotes remind us that it is on the societal, not the individual, level that “science and virtue [are] incompatible” (D1, 13). Even true science and philosophy, when pursued by the masses, are at odds with social morality.

Section 6: Mill on the Assumption of Infallibility

It might seem, at this point, that Mill and Rousseau are not so completely at odds. At least, both appear to accept that, when pursued by certain members of society, science and philosophy are beneficial. It also is clear that, in “The Utility of Knowledge,” Mill was wrong to attribute to Rousseau the thought that knowledge, as a rule, is an “enemy to happiness”. Rousseau agrees that knowledge is no enemy of happiness, but dissents on the question of whether a society, taken as a whole, ought to be engaged in the pursuit of science and philosophy. They obscure, at least for most people, our ingrained knowledge of how to live virtuously. Though they may also ultimately reveal that same knowledge to a few individuals, the social costs of science and philosophy are, for most people, so morally damaging that they outweigh the benefits of the recovered knowledge for the

²¹See also on these points: “The cultivation of the Sciences corrupts a nation’s morals, that is what I dared to maintain... But how could I have said that Science and Virtue are incompatible in every individual, I, who exhorted Princes to invite the truly Learned to their Court and to place their trust in them so that we might for once see what Science and Virtue combined can do for the happiness of mankind... it takes a combination of great talents and great Virtues to put Science to good use... it cannot be expected from an entire people” (O, 34; see also D1, 26).

few. This is his justification for calling for the renunciation of science and philosophy altogether.

It is this last point that Mill is simply unable to accept. Whatever the deleterious moral effects one might judge to be associated with science and philosophy, Mill rejects the idea that any authority could ever have the standing to undermine the conditions that provide for the possibility of intellectual progress. The key difference in their stances toward science and philosophy appears, then, in their disagreement over whether one can have the sort of near-infallible, non-inquisitive knowledge that Rousseau identifies. With his claims about “conscience,” Rousseau obliges what Mill might have argued simply in virtue of the renunciation of science and philosophy.

As we saw, in the passage from “The Utility of Knowledge” that most clearly addresses Rousseau – which refers to the “ascetic sophistry of the fanatic Rousseau” – Mill seems to glimpse the epistemic component of their disagreement in this way. He writes that if someone wanted to deny the practical authority of the claims of individuals (in a civilized society) concerning how to live, he would not only need to contest their substantive conclusions, but also explain why he (and not they) should be thought to have epistemic standing: “Were such a reasoner to arise I should ask him by what authority he claims to know better than A, B and C what constitutes the happiness of A, B and C.” This claim marks an early appearance of Mill’s concern with relative expertise as a basis for having a kind of jurisdiction over certain matters, which, as we shall see in Chapter 3, becomes an important component of his organizational political designs. Where one is less likely to be right about how to achieve the happiness of A, B, and C in some domain,

one's claims are, as it were, short-circuited practically.²² Mill appears to sense – however fleetingly – that his disagreement with Rousseau turns on whether we “have a guide within, much more infallible than all the books, and which never forsakes us when we are in need.” If we undermine this claim, we also undercut Rousseau's “authority” to call for the end of science and philosophy. As early as his essay “The Church” (1828), Mill wrote: “It would be a considerable stretch of arrogance in mankind to suppose that they had already attained the pinnacle of knowledge either in religion or politics; it is highly probably that there is still room for improvement in both” (CW XXVI, 425).

But, setting aside the issue of whether conscience provides a near-infallible guide for action, does the call to eliminate science and philosophy involve an assumption of infallibility? What does Mill mean by arguing that it does?

It is worth noting that this claim does not begin with Mill. Locke, whom Mill greatly admired, had worried about whether Catholics (“who, as if infallible, arrogate to themselves dominion over the consciences of others”²³) should be tolerated in society.²⁴ This concern appears perhaps most clearly in some of his correspondence. As early as 1659, he wrote in a letter:

²²The jurisdictional element of Mill's political thought is the subject of chapters 3 and 4.

²³Translation from Latin into English of John Locke to Philippus van Limborch, 14 October 1698 (Letter 2498). *The Correspondence of John Locke: Volume 6: Letters nos. 2199–2664*. Ed. E. S. De Beer. Oxford: Oxford University Press, 1981. *Electronic Enlightenment*, ed. Robert McNamee et al. Vers. 1.3. May. 2009. University of Oxford. 10 Jun. 2009 <http://www.e-enlightenment.com/item/lockjoOU0060494_1key002cor>.

²⁴Locke would later allow, in correspondence again with van Limborch, that “any church whatsoever lays claim in words to orthodoxy and in practice to infallibility”. Limborch had written that he hoped his own criticisms of religious leaders might be more easily accepted by being focused on the Romanists, but that his intended target was wider in scope. See: Translation from Latin into English of John Locke to Philippus van Limborch, 10 March 1692 (Letter 1473). *The Correspondence of John Locke: Volume 4: Letters nos. 1242–1701*. Ed. E. S. De Beer. Oxford: Oxford University Press, 1979. *Electronic Enlightenment*, ed. Robert McNamee et al. Vers. 1.3. May. 2009. University of Oxford. 10 Jun. 2009 <http://www.e-enlightenment.com/item/lockjoOU0040399_1key002cor>.

The only scruple I have is how the liberty you grant the Papists can consist with the security of the Nation (the end of government) since I cannot see how they can at the same time obey two different authorities carrying on contrary interest especially where that which is destructive to ours is backed with an opinion of infallibility and holiness supposed by them to be immediately derived from God founded in the scripture and their own equally sacred tradition, not limited by any contract and therefore not accountable to any body, and you know how easy it is under pretence of spiritual jurisdiction to hooke in all secular affairs since in a commonwealth wholly Christian it is no small difficulty to set limits to each and to define exactly where one begins and the other ends.²⁵

Locke's concerns in this passage are various, but it clearly emerges from this and other writings that he regards certain players on the social and political scene as having, dangerously, assumed infallibility. And he suggests that the effort to deny the possibility of improving one's beliefs is also to assume infallibility. In "A Letter from a Person of Quality," he expresses disapproval of an attempt by the established clergy to institute an oath for political leaders to the effect that they would "never... endeavour to alter" the teachings of the Protestant church: "...it is a far different thing to believe, or to be fully persuaded of the truth of the doctrine of our church, and to swear never to endeavour to alter; which last must be utterly unlawful, unless you place an infallibility either in the church or yourself..." and he asks, "whether that legislative power, which imposes such an oath, does not necessarily assume to itself an infallibility?"²⁶ These passages from Locke provide clues for understanding Mill's own position.

²⁵Spellings as in original. John Locke to Henry Stubbe, 25 September 1659 (Letter 75). *The Correspondence of John Locke: Volume 1: Introduction; Letters nos. 1–461*. Ed. E. S. De Beer. Oxford: Oxford University Press, 1976. *Electronic Enlightenment*, ed. Robert McNamee et al. Vers. 1.3. May. 2009. University of Oxford. 10 Jun. 2009 <http://www.e-enlightenment.com/item/lockjoOU0010109_1key001cor>.

²⁶John Locke, "A Letter from a Person of Quality to his Friend in the Country; Giving An Account of the Debates and Resolutions of the House of Lords, in April and May, 1675, concerning a Bill, entitled, 'An Act to prevent the Dangers which may arise from persons disaffected to the Government,'" in *The Works of John Locke*, Vol X (Tegg, et al; London, 1823).

Similarly, we might consider Jeremy Bentham's work on the revisability of constitutional codes. In the course of his extensive writings on constitutional codes, Bentham argued against the establishment of constitutional codes that claim the final say on social and political matters. To hold out a set of laws as "immutable," Bentham argued, is to assume infallibility and impede social progress.²⁷ Rules to revise a constitutional code must, therefore, be built into the code itself. Evidence of Bentham's view is contained in a number of his writings. In his 1791 essay, "Necessity of an Omnipotent Legislature," Bentham argues that the Constituent Assembly's decision to make the French constitution un-amendable for ten years was a travesty. Melissa Schwartzberg nicely summarizes Bentham's position:

The idea that any product of the Assembly could be infallible, Bentham argued, was outrageous: every act of the constitution emerged from a process of arguing and bargaining. The Assembly spent two and a half years "doubting, disputing, changing, struggling," and at some point, upon voting, "all of a sudden at a certain hour of a certain day have worked itself up into infallibility."...

Bentham acknowledged that the Assembly might have had a response. They had not attempted to preserve particular pieces of legislation, nor did they regard these details as perfect; indeed, they might well be improvable. However, "were we to expose any one article to innovation, the change, the spirit of innovation, might extend to the rest-as there is no drawing of the line, it is for the sake of the whole that we must protect the parts." Yet, Bentham countered, if you, the Assembly, acknowledged the possible defectiveness of individual articles, this in turn suggested that "You are not persuaded of your own infallibility; and yet you act as if you were; you engage in a measure which nothing but infallibility could justify."²⁸

Bentham similarly criticizes the Spanish constitution for containing what he calls an "immutability-enacting, alias the infallibility-assuming clause" that prohibited

²⁷This discussion follows closely that of Melissa Schwartzberg, "Jeremy Bentham on Fallibility and Infallibility," *Journal of the History of Ideas*, Oct 2007. Vol. 68, Iss. 4.; See also her *Democracy and Legal Change* Cambridge, UK: Cambridge University Press, 2007), Ch. 4.

²⁸Cited in Schwartzberg, "Jeremy Bentham on Fallibility and Infallibility," p. 578; the Bentham quotations are from his "Necessity of an Omnipotent Legislature".

amendments for a time.²⁹ The Portuguese constitution, which Bentham was invited to help draft, could improve on the earlier Spanish constitution, he argues, by dropping this clause. The ideal constitution for Bentham is the one that, among other things, incorporates within itself the fact that it is unlikely to be ideal.

Bentham's advocacy of legislative omniscience – the ability of the legislature to review and revise any and all governing principles – derives in part from his suspicion about the epistemic standing of immutable laws. To decide some matter with finality is to assume infallibility over even one's own future judgment. This assumption of infallibility is morally objectionable on the ground that for a constitutional convention to place certain matters off-limits to future judgment is to establish immutable law and severely harm the prospects of social progress: "Why render the legislature omniscient? Because it will the better enable it to give effect to the will of the supreme constitutive, and advancement to the interest and security of the members of the state".³⁰ The practical obstacle to legislative omniscience is the constitutional convention having granted to itself, at a *particular* time, the authority to decide some matter for *all* time – which could only be justified if that judgment were infallible. Every judgment or legal provision must remain open to revision:

Any limitation is in contradiction to the greatest happiness principle. An arrangement suppose, is proposed, which, in the unanimous opinion of the whole legislative, with the addition of the unanimous opinion of the whole constitutive, would be immediately contributory to the greatest happiness of the greatest number. For a certain length of time it cannot be carried into effect. Why? because it is repugnant to that which was the will of the constitutive at the moment at which this restrictive arrangement was established.

²⁹Jeremy Bentham, "Third Tract on Spanish and Portuguese Affairs," in *The Works of Jeremy Bentham*, vol. VIII, ed. Bowring (Edinburgh: William Tait, 1843), p. 483.

³⁰Bentham, *Constitutional Code*, in *Works IX*, ed. Bowring, (1843), p. 119.

*On one supposition alone can it be supported, namely, that on the part of the constitutive and legislative, at the time at which it received its establishment, appropriate aptitude had place in a greater degree than it can have place at any succeeding point of time: in particular, than at any point of time at which a proposition would be brought forward for some change of the number of those on which the restrictive arrangement in question would put a negative. The untenableness of this supposition has been already exposed.*³¹

We should decry the assumption of infallibility in the form of immutable laws on two grounds. First, such a “restrictive arrangement” likely means that the best available judgment will not be given authority at some future time. In fact, it will “be employed in giving support and stability to evil in every shape... to put an exclusion upon a good law” (Ibid.). We therefore have reason to doubt the quality or authority of current judgment in circumstances unfriendly to reform efforts. Second, it undermines the very possibility of rational – as opposed to accidental – progress; it is a “veto upon remedy and improvement” (Ibid.). Those who would set up laws for all-time are, then, “would-be tyrants over futurity” (Ibid.).

Let us now return to Mill’s argument against the assumption of infallibility. His 1838 essay on Bentham makes clear the influence of his mentor’s treatment of these matters:

...[Bentham] demonstrated the necessity and practicability of codification, or the conversion of all law into a written and systematically arranged code... one containing within itself all that is necessary for its own interpretation, together with a *perpetual provision for its own emendation and improvement.*” (CW X, 104; emphasis added)

By the time of *On Liberty* some twenty years later, Mill’s attention to the problem of assuming infallibility takes up a large portion of his discussion of the “liberty of thought and discussion” in Chapter II. Mill starts by noting the failure of decision-makers to

³¹Ibid. Emphasis added.

recognize the rational limits on their decisions, even where they are well-placed to make those decisions:

Unfortunately for the good sense of mankind, the fact of their fallibility is far from carrying the weight in their practical judgment, which is always allowed to it in theory: for while every one well knows himself to be fallible, few think it necessary to take any precautions against their own fallibility, or admit the supposition that any opinion, of which they feel very certain, may be one of the examples of the error to which they acknowledge themselves to be liable. (CW XVIII, 229-230)

Mill then argues that a key precaution against one's own fallibility is to sincerely hold one's beliefs open to challenge under the critical conditions of discussion and experience. To undermine those conditions by restricting the expression of opinion or (with more allowances) "experiments of living," is then to fail to take precaution against one's own fallibility. Rather, one reveals a failure to appreciate that one's beliefs (perhaps within a limited scope), and decisions relying on those beliefs, may be mistaken. And in undermining the crucial check on one's judgment, one assumes the position of infallible judge for future considerations. It is not that relevant authorities may never decide some matter. Surely they can, and must. It is just that their decisions may not go so far as to assume infallibility.

One consequence of limiting the freedom of the expression of opinion, for Mill, is that speech restrictions damage the critical conditions that prevent social or political decisions from being determined by the mere "likings and dislikings" of some powerful party. Some social control is necessary: "All that makes existence valuable to anyone depends on the enforcement of restraints upon the actions of other people. *Some rules of conduct, therefore, must be imposed...*" (CW XVIII, 220; emphasis added). But which rules and how should they be determined? In a first step toward an answer, in the early

part of Chapter I of *On Liberty*, Mill addresses the issue of the appropriate “standard of judgment” (Ibid., 221) for social and political decision-making. The prevailing standard of social authority’s decisions, he argues, has typically been taken to be the mere “likings and dislikings” (Ibid., 222) or preferences of that majority. This standard is problematical because it (1) encourages the thought that it is acceptable for a majority to impose its mode of life on others and (2) fails to provide means for intellectual progress concerning social and political matters.³² In light of these dangers, Mill argues that our judgments must be based on reason rather than on mere preference: reasons not only can ground a critical and progressive discourse, but appreciating the limits of human reason as a standard of judgment helps us to see the limits on anyone’s authority to impose a single mode of life on everyone.

For the remainder of his essay, then, Mill assumes that the question of where to draw the line between social authority and individual self-directedness arises within a context in which it is not acceptable to let mere preferences dictate decision-making. To undermine science and philosophy would be, on Mill’s view, to undermine those conditions of discussion and experience that alone allow the decisions of social authority or the individual to remain rational and progressive. (Of course, if *Rousseau* accepts the dictates of conscience as a basis of decision-making, then he might not be as distressed by the appeal to preference, suitably understood. But, the present point is that Mill does not take this option seriously in *On Liberty*.) If rule by mere preference is excluded, then the only other possible grounds Mill sees for undermining the conditions of discussion and experience is that one is, in fact, entitled to take up the mantle of infallibility. But,

³²It is worth noting that these two worries are echoed in Ch. VI of *Representative Government*, “Of the Infirmities and Dangers to which Representative Government is Liable”. See CW XIX, 435ff.

human beings are fallible, and undermining discussion and experience in fact robs any party of the ability to have “authority” going forward.

What sorts of precautions against one’s fallibility are required? Mill argues that, at least, there ought to be an unlimited liberty of the expression of opinion in non-provocative contexts.

To refuse a hearing to an opinion, because they are sure that it is false, is to assume that *their* certainty, is the same thing as *absolute* certainty. All silencing of discussion is an assumption of infallibility. (CW, XVIII, 229)

A common reply to this claim is that restricting speech need not involve any assumption of infallibility, but only a sincere judgment that restricting the expression of some opinion probably would promote more utility than allowing it. Mill himself considers, and rejects, this reply:

This mode of thinking makes the justification of restraints on discussion not a question of the truth of doctrines, but of their usefulness; and flatters itself by that means to escape the responsibility of claiming to be an infallible judge of opinions. But those who thus satisfy themselves, do not perceive that the assumption of infallibility is merely shifted from one point to another. The usefulness of an opinion is itself matter of opinion: as disputable, as open to discussion and requiring discussion as much, as the opinion itself. *There is the same need of an infallible judge of opinions to decide an opinion to be noxious, as to decide it to be false, unless the opinion condemned has full opportunity of defending itself.* (CW XVIII, 233; emphasis added)

This reply may not be altogether clear. I think it helps to clarify Mill’s idea if we think of the assumption of infallibility as analogous to the assumption of responsibility, or of a throne. It is the taking up of a position. How should we characterize what is objectionable to Mill about doing so? It is *not* that the decision to restrict speech is necessarily made in the absence of critical oversight. Such a decision may be in accordance with the best judgment of a fallible authority, in the current state of debate, about the balance of consequences. Mill’s objection is rather with regard to the position it puts that authority

in with regard to future decisions and problems. Recall the passages from Locke and Bentham. In both cases, there was an emphasis on the standing of laws or dictates *over time*. Similarly, we should understand the assumption of infallibility as a position a party may never take up with regard to future circumstances. Mill writes, “it is not the feeling sure of a doctrine (be it what it may) which I call an assumption of infallibility. It is the undertaking to decide that question *for others*, without allowing them to hear what can be said on the contrary side” (CW XVIII, 234). In a state of open debate, a decision to censor need not involve a failure to allow others to hear contrary sides up to the time of the decision. One might therefore think, with David Lewis, that Mill would allow restrictions when that condition has been satisfied. Lewis argues that, on Mill’s view, if some authority has attended carefully to the state of critical debate, it may then restrict speech going forward:

Mill thus assures us that if we *do* meet the condition, then we *are* justified in acting on our opinions. Our Inquisitor, if he takes Mill’s word for this as he does on other matters, will not dare suppress heresy straightway. First he must spend some time in free discussion with the heretics. Afterward, if they have not changed his mind, then he will deem himself justified in assuming the truth of his opinion for purposes of action; which he will do when he goes forward to suppress heresy, and burns his former partners in discussion at the stake.³³

But this is very far from Mill’s meaning. What goes wrong here is that Lewis fails to take account of the position the authority (the Inquisitor) takes up with regard to the future by deciding now to silence discussion. “The others,” for whom we decide some question by restricting speech now, are in the future. Mill allows that the best available judgment at any given time – in light of actual debate up to that time – might be that the restriction of speech on some matter would most benefit society. But he rules out such restrictions

³³David Lewis, “Mill and Milquetoast,” in *Papers in Ethics and Social Philosophy* (Cambridge University Press; New York, 1999), p. 171.

because, in enforcing them, one takes up an epistemic position with regard to future individuals and circumstances that one cannot pretend to deserve. It is, in essence, to take up the same position with regard to A, B, and C (and their own judgments concerning their own good) that Mill worries Rousseau has taken up in his *First Discourse* when he advocates the renunciation of science and philosophy.

The question is not what some social authority assumes in his or her head when deciding to restrict speech. It is what position they place themselves in as decision-makers, by enforcing that restriction. Mill argues that they place themselves in a position that can only justifiedly be held by infallible creatures. Lewis's Inquisitor, on Mill's view, may rightfully do a great many things, but he may *not* burn his former interlocutors at the stake merely for their having expressed an opinion.

Section 7: Conclusion

We have now come a long way from "The Utility of Knowledge," but I have hoped to show that it offers a glimpse into Mill's early attention to the relationship between knowledge and politics – including the political relevance of the growth of knowledge and the rational limits on our claims to know. I have tried to show, by considering Mill's response to the claims of the *First Discourse*, how his rejection of Rousseau's "authority" to call for the renunciation of science and philosophy leads naturally to a consideration of the argument in *On Liberty* against the assumption of infallibility. In the next chapter, we explore in greater detail the role of intellectual improvement in Mill's progressivism. As we piece together the epistemic components of Mill's political philosophy, we will find that Mill's concern with the assumption of

infallibility provides an important safeguard against tyranny. Whatever leeway is given to social authority, in “civilized” circumstances it must remain within certain parameters associated with the conditions of discussion and experience, or undermine the very basis of its authority.

Chapter Two

Intellectual Improvement and Liberal Social Arrangements

Section 1: Introduction

In the last chapter, we saw that the young Mill was opposed to Rousseau's rejection of science and philosophy in the *First Discourse*, on the ground that the growth of knowledge through science and philosophy is a key means to realizing the good. Mill argues that among the cooperative ventures that society makes possible, science and philosophy are among the most important because only through discussion and experience can we reasonably expect to improve our understanding of how to achieve the good, including how to rectify the vice-inducing tendencies of civilization that Rousseau identified. We then turned to Mill's concern with the limits of human reason as a constraint on social or political authority. No human being, Mill argues, could ever have justification sufficient to undermine the conditions of discussion and experience.

In this chapter, I want to explore further the epistemic aspect of Mill's attention to progress as a principle of his political philosophy. By "epistemic" I mean to flag the role that Mill assigns to the improvement of our understanding, or the growth of knowledge, as an engine of social progress. The notion of progress makes important appearances throughout his writings, culminating in important passages in both *On Liberty* and *Considerations on Representative Government*. I think not enough attention is paid to

these passages, in which Mill articulates part of the very core of his argument for liberal social arrangements. Mill declares in *On Liberty* that his commitment to progress surpasses his commitment to liberty, the latter having value primarily as a means to the former (CW XVIII, 272). In *Representative Government*, Mill asserts that, properly understood, the idea of progress “includes the whole excellence of a government.” (CW XIX, 388). To understand Mill’s politics, I believe, one must come to terms with such comments.³⁴ I will not try to capture all of what Mill has to say about progress, but its epistemic aspect plays a key role in an instrumental argument for liberal social institutions that will occupy us here.

The argument may be stated straightforwardly. Mill believes knowledge to be a key means to the good. He also believes human beings to be fallible. The combination of these ideas leads him to argue that, in a civilized society, the conditions conducive to learning – what he calls “discussion and experience” – must not be undermined, or we must relinquish any serious claim to be committed to the good itself. In *On Liberty*, he cites “...the source of everything respectable in man either as an intellectual or as a moral being, namely, that his errors are corrigible. He is capable of rectifying his mistakes, by discussion and experience” (CW XVIII, 231). Given this, we are strongly committed to those basic liberal social arrangements, including free speech and “experiments of living” (CW XVIII, 260), that best allow us to learn from experience. This argument offers a powerful, and fairly ecumenical, case for basic liberal social arrangements.³⁵

³⁴As we shall see in Chapter Four, standard interpretations of *On Liberty* rest on Mill’s commitment to individuality as a component of the human good, and so to the provision of a sphere of liberty that allows individuality to flourish. But this interpretation does not reflect the way that Mill’s progressive concern, which motivates his discussion of individuality, typically appears in his work. We must understand how it is that, for Mill, progress trumps liberty.

³⁵For a similar argument, with the aim of grounding something like a Rawlsian overlapping consensus, see Allen Buchanan, “Social Moral Epistemology,” *Social Philosophy & Policy*, vol.19, 2 (Summer 2002).

This argument cannot, however, generate more specific recommendations for the “organization” of society. In Chapter 3, therefore, I turn to Mill’s framework for the organizational reform of government and social authority. But his institutional recommendations for “civilized” society all come within a theoretical structure that guarantees certain basic liberal social arrangements. A key part of that story concerns the growth of knowledge as a means to the good, because the main mechanisms for achieving the good – education and public opinion – are best served by providing for the conditions of discussion and experience, in which a diversity of opinion and modes of life can flourish and be tested. In his *Principles of Political Economy*, Mill writes:

...that multiform development of human nature, those manifold unlikenesses, that diversity of tastes and talents, and variety of intellectual points of view, which not only form a great part of the interest of human life, but by bringing intellects into stimulating collision, and *by presenting to each innumerable notions that he would not have conceived of himself, are the mainspring of mental and moral progression.*³⁶ (CW III, 979; emphasis added)

In this passage Mill alludes to two arguments for the development of individuality (or self-directedness) that, in *On Liberty*, correspond to the phrases “the free development of individuality” and “the individuality of development”. On one hand, he has a substantive conception of a person’s good as partly constituted by its own individual development. Individuality, according to this argument, is to be promoted and protected as a component of human happiness. I will call this the “intrinsic” argument for individuality, because individuality is to be treated – like virtue, on Mill’s view – *as* inherently valuable (though ultimately its value derives from its contribution to the end of happiness). On the other hand, he offers a more straightforwardly instrumental account of the value of individuality, according to which it generates the diversity of opinion and modes of life

³⁶The context of this comment is Mill’s discussion of whether Communism could be a satisfactory social order.

that contribute to the intellectual improvement that is so conducive to individual and social progress. This two-fold argument for individuality – that is, for allowing individuals to determine their own path in life – is repeated in *On Liberty*: “Where, not the person’s own character, but the traditions or customs of other people are the rule of conduct, there is wanting [1] one of the principal ingredients of human happiness, and [2] quite the chief ingredient of individual and social progress” (CW XVIII, 261). Much is made of Mill’s argument for the intrinsic value of individuality. But, while it is certainly important, the instrumental or progressive argument for individuality is, I want to suggest, more fundamental to his political philosophy.

Section 2: The State of Nature and the Value of Despotism

As we saw last chapter, in “Civilization” (1836) Mill echoes Rousseau in arguing that life in society has led to a loss of active and “heroic” character, and a greater focus on the superficial. But Mill also argues, first, that the uncivilized state of man is rather Hobbesian (and not progressive) and, second, that the problems Rousseau associates with civilization can be rectified, in part through the development of science and philosophy. “Savage” existence is no option.³⁷ This is the core of Mill’s justification of the state.

³⁷Mill certainly thought there were, as yet, some savage societies, but in argument he was happy to treat the state of nature as a hypothetical. In his early essay “Use and Abuse of Political Terms” (1832), he writes: “The state of society contemplated by Rousseau, in which mankind lived together without government, may never have existed, and it is of no consequence whether it did so or not. The question is not whether it ever existed, but whether there is any advantage in supposing it hypothetically; as we assume in argument all kinds of cases which never occur, in order to illustrate those which do. All discussions respecting a state of nature are inquiries what morality would be if there were no law. This is the real scope of Locke’s *Essay on Government*, rightly understood: whatever is objectionable in the details did not arise from the nature of the inquiry, but from a certain wavering and obscurity in his notion of the grounds of morality itself” (CW XVIII, 10-11). Mill also notes that in the international sphere, “all independent governments, in relation to one another, are actually in a state of nature, subject to moral duties but obeying no common superior” (CW XVIII, 11).

Mill argues, however, that we cannot step from savage existence directly into liberal democratic society. The first step of progress is the one that forces savages into despotic society. It bears mentioning, then, as Mill notes in *On Liberty*, that the argument against undermining the conditions of discussion and experience applies only to civilized circumstances in which the individuals in society are capable of exercising their basic rational capacities in a cooperative way. This is consistent with Mill's denial, in his *System of Logic*, that any "universal precepts" – short of the principle of utility itself – apply to all political circumstances (CW VIII, 876). With regard to "savage" individuals, as we shall see, Mill accepts the Hobbesian view of the impossibility of cooperation, and of the need for despotism to provide security and to begin to train people's habits to social life, from which greater good may ultimately flow. With regard to "civilized" individuals, however, Mill argues that once people are trained for social life (and assuming they have a basic rational capacity), society can, and should, adopt a more liberal social arrangement without which continued progress would be exceedingly unlikely.

The term "civilization" is intended by Mill to be descriptive in this case: "Wherever... we find human beings acting together for common purposes in large bodies, and enjoying the pleasures of social intercourse, we term them civilized" (CW XVIII, 120). While "savage" life is marked by a lack of coordinated activity, and so by relatively small numbers of "wandering" or "scattered" individuals and tribes relying on their "strength or cunning" (CW XVIII, 120), civilization exists "where the arrangements of society, for protecting the persons and property of its members, are sufficiently perfect to maintain peace among them: *i.e.* to induce the bulk of the community to rely for their

security mainly upon social arrangements, and renounce for the most part, and in ordinary circumstances, the vindication of their interests... by their individual strength or courage” (CW XVIII, 120).

Consider the savage: he has bodily strength, he has courage, enterprise, and is often not without intelligence; what makes all savage communities poor and feeble? The same cause which prevented the lions and tigers from long ago extirpating the race of men – incapacity of co-operation. It is only civilized beings who can combine. All combination is compromise: it is the sacrifice of some portion of individual will, for a common purpose. The savage cannot bear to sacrifice, for any purpose, the satisfaction of his individual will. His social cannot even temporarily prevail over his selfish feelings, nor his impulses bend to his calculations. (CW XVIII, 122)

Security in social arrangements provides the first prerequisite for the development of the “arts of life,” including farming, commerce, and the law. With social life the population also grows, and with the development of cooperative tendencies “power passes more and more from individuals, and small knots of individuals, to masses” within which “property and intelligence become... widely diffused” (CW XVIII, 121, 122). As a result, “[t]here is not a more accurate test of the progress of civilization than the progress of the power of co-operation” (CW XVIII, 122).

Mill’s Hobbesian line on uncivilized existence is expressed most explicitly in a passage from his posthumously published *Chapters on Socialism*, in which he criticizes the destructive approach of “revolutionary Socialists”:

...the animating principle of too many of the revolutionary Socialists is hate; a very excusable hatred of existing evils, which would vent itself by putting an end to the present system at all costs even to those who suffer by it, in the hope that out of chaos would arise a better Kosmos, and in the impatience of desperation respecting any more gradual improvement. They are unaware that chaos is the very most unfavourable position for setting out in the construction of a Kosmos, and that many ages of conflict, violence, and tyrannical oppression of the weak by the strong must intervene; they know not that they would plunge mankind into the state of nature so forcibly described by Hobbes (*Leviathan*, Part I. ch. xiii.), where every man is enemy to every man:—

In such condition there is no place for industry, because the fruit thereof is uncertain, and consequently no culture of the earth, no navigation, no use of the commodities that may be imported by sea, no commodious building, no instruments of moving and removing such things as require much force, no knowledge of the face of the earth, no account of time, no arts, no letters, no society; and, which is worst of all, continual fear and danger of violent death; and the life of man solitary, poor, nasty, brutish, and short.

If the poorest and most wretched members of a so-called civilised society are in as bad a condition as every one would be in that worst form of barbarism produced by the dissolution of civilised life, it does not follow that the way to raise them would be to reduce all others to the same miserable state. On the contrary, it is by the aid of the first who have risen that so many others have escaped from the general lot, and it is only by better organization of the same process that it may be hoped in time to succeed in raising the remainder.” (CW V, 749)³⁸

How does cooperation arise? Savages discover the advantages of mutual cooperation through force or “training” by masters: “Co-operation, like other difficult things, can be learnt only by practice: and to be capable of it in great things, a people must be gradually trained to it in small. Now, the whole course of advancing civilization is a series of such training” (CW XVIII, 123). In *On Liberty* and *Considerations on Representative Government* Mill famously argues that despotism can be appropriate in “backward states of society” (CW XVIII, 224). This is because all other goods depend on “the diffusion of property and intelligence, and the power of co-operation” (CW XVIII, 124), which can develop only under conditions of security. But savages are incapable of cooperation, and so security and cooperation can be achieved at first only by the enforceable demand for obedience to some ruler:

³⁸On his acceptance of Hobbes’ line, see also “Corporation Bill,” 1833 (CW XXIII, 632): “...we then behold in what seemed absurd at first, no less than the commencement of a federative system of police for the European commonwealth: a commencement imperfect and barbarous enough, but such as *all* government was in its first beginnings. We recognize the same interests at work in the community of *nations*, which elevated the separate communities of *men* from a state of nature to a state of peaceful society.”

...a people in a state of savage independence, in which every one lives for himself, exempt, unless by fits, from any external control, is practically incapable of making any progress in civilization until it has learnt to obey. The indispensable virtue, therefore, in a government which establishes itself over a people of this sort is, that it make itself obeyed. To enable it to do this, the constitution of the government must be nearly, or quite, despotic. A constitution in any degree popular, dependent on the voluntary surrender by the different members of the community of their individual freedom of action, would fail to enforce the first lesson which the pupils, in this stage of their progress, require. Accordingly, the civilization of such tribes, when not the result of juxtaposition with others already civilized, is almost always the work of an absolute ruler, deriving his power either from religion or military prowess; very often from foreign arms. (CW XIX, 394; see also CW XIX, 384 and CW XVIII 264)

Ultimately, obedience is only a necessary but not sufficient condition of good government or social life. But, Mill argues, it begins the development of a habit of cooperation that can be directed productively toward new projects free from despotic rule. Individual laborers forced by a master to work together learn the value of the “division of employments” (CW XVIII, 123). Navigation and military operations “are a similar school: so are all the operations of commerce and manufactures which require the employment of many hands” (CW XVIII, 123). In “Civilization,” he writes that these projects then further develop cooperative habits:

By these operations, mankind learn the value of combination; they see how much and with what ease it accomplishes, which never could be accomplished without it; they learn a practical lesson of submitting themselves to guidance, and subduing themselves to act as interdependent parts of a complex whole. A people thus progressively trained to combination by the business of their lives, become capable of carrying the same habits into new things... Habits of discipline once acquired, qualify human beings to accomplish all other things for which discipline is needed. No longer spurning control, or incapable of seeing its advantages; whenever any object presents itself which can be attained by co-operation, and which they see or believe to be beneficial, they are ripe for attaining it. (CW XVIII, 124)

In *Representative Government*, Mill argues that with proper instruction and training barbarians may be readied for self-government by a “parental despotism”:

They have to be taught self-government, and this, in its initial stage, means the capacity to act on general instructions. What they require is not a government of force, but one of guidance. Being, however, in too low a state to yield to the guidance of any but those to whom they look up as the possessors of force, the sort of government fittest for them is one which possesses force, but seldom uses it: a parental despotism or aristocracy, resembling the St. Simonian form of Socialism; maintaining a general superintendence over all the operations of society, so as to keep before each the sense of a present force sufficient to compel his obedience to the rule laid down, but which, owing to the impossibility of descending to regulate all the minutiae of industry and life, necessarily leaves and induces individuals to do much of themselves. This, which may be termed *the government of leading-strings, seems to be the one required to carry such a people the most rapidly through the next necessary step in social progress...* I need scarcely remark that leading-strings are only admissible as a means of gradually training the people to walk alone.” (CW XIX, 395-396; emphasis added)

Unlike Rousseau, then, Mill accepts a harsh image of man in his “natural” state. In *On Liberty*, he suggests that a man without society is not a happy man: “All that makes existence valuable to any one, depends on the enforcement of restraints upon the actions of other people. Some rules of conduct, therefore, must be imposed” (CV XVIII, 220). Given the power of modern governments and the invasiveness of social customs, and given the fact that the provision of a “sphere” of personal liberty seems to be a major constituent of progress in civilized society, Mill also argues there is now in civilized society an “onus” on those who would impose further restrictions to prove their case.³⁹ But this not to deny that even despotically-ruled society is better than no society at all. A despotically-ruled society offers at least some of the basic materials required for progress, which are otherwise unavailable. As we saw in the last chapter, Mill seems to reaffirm Hobbes’ claim that, absent security and modicum of leisure, the “savages of America” could not spontaneously develop the reasoning that might have helped them improve

³⁹See Chapter V of his *Principles of Political Economy*: “Even in those portions of conduct which do affect the interest of others, the onus of making out a case always lies on the defenders of legal prohibitions” (CW III, 938).

their lives. According to both Hobbes and Mill, the establishment of some rules of conduct – which can promote peace and the development of cooperative activity, including the growth of knowledge – requires the imposition of power over individuals who would otherwise be unable to “combine”. And, like Hobbes, Mill seems to argue in “Civilization” that there is no foreseeable situation that would justify returning to an uncivilized state. The uncivilized state is a “state of perpetual personal conflict,” in which human beings become habituated to “the spectacle of harshness, rudeness, and violence, to the struggle of one indomitable will against another, and to the alternate suffering and infliction of pain” (CW XVIII, 130).

But Mill separates himself from Hobbes, and not only in his rejection of the social contract framework. He argues that the imposition of power can begin the training of habits of discipline and cooperation that can then be re-directed to new projects and, eventually, make possible a non-despotic form of government. With civilization, even prior to any efforts to design systems of education, come a number of good effects, including an initial “diffusion” of knowledge:

Nor can it be denied that the diffusion of even such knowledge civilization naturally brings, has no slight tendency to rectify, though it be but partially, the standard of public opinion; to undermine many of those prejudices and superstitions which made mankind hate each other for things not really odious: to make them take a juster measure of the tendencies of actions, and weigh more correctly the evidence on which they condemn or applaud their fellow creatures; to make, in short, their approbation direct itself more correctly to good actions, and their disapprobation to bad. (CW XVIII, 132)

These and other good effects can be built upon until the despot can be removed in favor of a democratic form of government without the threat of returning to a state of nature. With that threat removed, it is no longer the case that the despot’s every move would be

justified by the danger that undermining his authority would return us to a savage existence.⁴⁰

Section 3: Cultivation through Education and Public Opinion

As Mill deviates from Hobbes by arguing that humans can become habituated to cooperate, he similarly argues in “Civilization” that at least some of the ills of civilization identified by Rousseau can be “met by a system of cultivation adapted to counteract” them⁴¹: “All that we are in danger of losing we may preserve, all that we have lost we may regain, and bring to a perfection hitherto unknown: but not by slumbering, and leaving things to themselves...” (CW XVIII, 136). Mill also remarks on the natural good effects of civilization on public opinion, one of the main mechanisms (with education) of cultivation: “...improvement in the general understanding, softening of the feelings, and decay of pernicious errors, as naturally attends the progress of wealth and the spread of reading, suffices to render the judgement of the public upon actions and persons, so far as evidence is before them, much more discriminating and correct” (Ibid., 132). Mill argues that, with proper attention to education and public opinion we may retain the good, while rectifying the bad, in civilization.

Mill’s view of cultivation is informed, in part, by his conception of human happiness, but not surprisingly – in light of the two-fold arguments for individuality we saw earlier – it also has an instrumental component in which the concern with cultivation appears to be largely a concern with the conditions required to realize the social benefits of intellectual improvement. This latter theme appears early in Mill’s work. Let us begin

⁴⁰Mill of course also rejects Hobbes’ and Rousseau’s reliance on the idea of a social contract. But I will leave that issue to the side.

⁴¹CW XVIII, 132.

with a speech from 1825, “Population: Reply to Thirlwall,” before the Fabian Society, during which he states his view that social progress is a matter of inculcating prudence (or restraint in the pursuit of one’s ends) in the general populace. He refers to his “expectation on which all our hopes of human improvement are founded, the expectation of a gradual increase of prudence, among the people” (CW XXVI, 304). And he argues that this is to be achieved by “the diffusion of knowledge” or “the extension of education” (Ibid.):

Experience proves and proves fully, that men do follow their interest more steadily, in proportion as they know better what it is. It is easy to say that those who have most knowledge do not always act the most wisely—but the gentleman I presume, will scarcely on that account affirm that it is not the tendency of knowledge, to make men act wisely. Nor have I ever yet heard of any other recipe of making them wise except by giving them knowledge, uncertain as that method may be. (Ibid., 305)

In “The Church” (1828, also given to the Fabian Society), the young Mill acknowledges that the possibility of moral and intellectual progress is thought by some to be a joke: “there are persons in this country, and for aught I know in this Society, to whom the march of intellect, which is another word for the progressiveness of the human mind, is a subject of laughter and derision” (CW XXVI, 424). He therefore explains that by “progressive” he intends just the ability of the human mind to “profit by experience” (Ibid.) and argues we have already demonstrated a capacity to bring our “intellectual faculties” to bear on experience:

I hold that wherever mankind have been qualified to profit by experience, by possessing even in a moderate degree, these two great instruments [education and discussion], they have, as the mass of experience has increased, constantly grown wiser and better; and that this progressive advancement has never been interrupted but when these two means of instruction have been prevented from existing by despotism as in the Roman empire, by anarchy as in feudal Europe, or by superstition and priestcraft as in Spain and Portugal. (Ibid.)

Mill identifies the “spirit of improvement” with the “spirit of universal inquiry” according to which “[t]he very idea of progressiveness implies not indeed the rejection, but the questioning of all established opinions” (Ibid., 426). This evokes Mill’s remark in *On Liberty*, which we saw earlier, concerning “the source of everything respectable in man either as an intellectual or as a moral being... He is capable of rectifying his mistakes, by discussion and experience” (CW XVIII, 231).

Interestingly, in “The Church” Mill asserts explicitly that the need for inquiry and discussion would remain even if (given the subject of his essay) the clergy taught only truths: “The good of mankind requires that nothing should be believed until the question be first asked, what evidence there is for it” (CW XXVI, 425). Mill would later assert a version of this thesis in his famous discussion of freedom of speech in Chapter II of *On Liberty*, in which he argues that the value of free speech is not lessened when we assume that prevailing opinion is true. In *Representative Government*, Mill relatedly argues that his concern with progress implies a concern with staving off social deterioration, and that the practices of discussion and experience are required in both cases. And, as he would also emphasize later, in “The Church” he argues that we cannot claim confidence in our own opinions sufficient to justify undermining further discussion and experience: “It would be a considerable stretch of arrogance in mankind to suppose that they had already attained the pinnacle of knowledge either in religion or politics; it is highly probable that there is still room for improvement in both” (CW XXVI, 425). This claim, as we saw, is at the heart of Mill’s disagreement with Rousseau.

Three months after presenting “The Church,” Mill returned to the Fabian Society with a speech on “Perfectibility” to further develop the idea that great moral and

intellectual progress is possible: “is it indeed an error to suppose mankind capable of great improvement? And is it really a mark of wisdom, to deride all grand schemes of human amelioration as visionary?” (CW XXVI, 428-429). In “The Church,” he had argued that those who resist the possibility of progress are in fact fearful of change,⁴² and here he accuses them of selfish laziness:

I mean no disrespect to some highly estimable persons, who are of a different opinion from myself on this question, but I am persuaded that a vast majority of those who laugh at the hopes of those who think that man can be raised to any higher rank as a moral and intellectual being, do so from a principle very different from wisdom or knowledge of the world... I believe that they hold the progressiveness of the human mind to be chimerical, because they are conscious that they themselves are doing nothing to forward it and are anxious to believe that great work impossible, in which if it were possible they know it would be their duty to assist. (CW XXVI, 429)

He adds that some individuals have an interest in maintaining the status quo or would prefer not to have to work on their own imperfections. It is therefore convenient for them to think improvement impossible. As a result, “not the man who hopes when others despair, but the man who despairs when others hope, is admired by a large class of persons as a sage” (CW XXVI, 429). But to the contrary: “I will even say, that so far from its being a mark of wisdom to despair of human improvement there is no more certain indication of narrow views and a limited understanding” (CW XXVI, 429).

His evidence for the possibility of moral and intellectual improvement is that it is one of “the clearest cases of experience” that there has already been such progress in the past: “...by all just rules of induction we ought to conclude that an extremely high degree of moral and intellectual excellence may be made to prevail among mankind at large, since causes exist which have confessedly been found adequate to produce it in many particular instances” (CW XXVI, 430). Consider moral improvement: “I suppose it will

⁴²CW XXVI, 424.

not be denied that there are and have been persons who have possessed a very high degree of virtue. Now here I take my stand: there have been such persons. I do not care how many; nor who they were..." (Ibid., 430). People will disagree about who they are, but it will not be denied that such persons have existed.

Mill argues that "the superior moral excellence of some persons" is due to two factors: "the original influence of good moral education, in their early years, and the insensible influence of the world, of society, of public opinion, upon their habits and associations in after life" (Ibid., 430). Of course, these two factors, which he simplifies to education and public opinion, often fail to produce the intended results. Concerning education, Mill argues that the "great business of moral education, to form virtuous habits of mind, is I may say entirely neglected" (Ibid., 431). When education fails to "set a sufficient value on those habits of mind which lead to good habits of conduct," it is because we "really do not know how such habits are generated" (Ibid., 431). Concerning public opinion, Mill argues that we favor the "rewards" of wealth and personal advantage over those of "high intellectual and moral excellence" (Ibid., 431). Thus, if wealth sets the standard of ambition in society, it is wealth that will most influence the opinions and actions of the "mass of mankind".

And yet, Mill notes, despite the "thousand obstacles" posed by faulty educational, legal, and social circumstances, there have been virtuous individuals.⁴³ Rather than think we cannot improve the general populace, we should think "that there is much less difficulty in producing it in all than there has been to produce it in some" (CW XXVI, 431). People have mistakenly inferred, Mill continues in "Perfectability," from the commonplace observation that we cannot change our passions to the conclusion that

⁴³On legal obstacles, see CW XXVI, 431-432.

moral progress is impossible. Evoking his reply to Thirlwall about prudence, he argues that passions can be regulated upon appreciation of the fact that they can be “as fully and much more permanently gratified” by virtuous conduct, i.e. conduct governed by some appropriate “auxiliary of the moral principle” (Ibid., 432). To those who would try to “vanquish” passion altogether in morality, Mill objects that the passions are necessary to action, and to do away with them would be to debilitate us entirely: “it is they which furnish the active principle, the moving force; the passions are the spring, the moral principle only the regulator of human life” (Ibid., 432). Thus, Mill thinks the case from human nature is on his side. It may be the case that there are constraints on human nature, but the suggestion that the passions are impossible to regulate is at odds with the evidence of human existence:

They who profess to know human nature so well, seem to be very little aware what it is capable of. Have we not seen that men have lain for their whole lives upon beds of spikes; that they have stood all their lives upon the tops of pillars; that they have remained all their lives without stirring for one moment from a certain posture because they have willed it? Have they not swung by hooks drawn through their backs, and suffered themselves to be crushed by chariot wheels, and laid themselves voluntarily on funeral piles to be burned? Have not these things been done not by heroes and philosophers, but thousands and millions of common men, commonly educated? And then let gentlemen come and give us arguments which, if they prove any thing, prove the impossibility of all this. (Ibid., 430)

Human nature is sufficiently malleable, then, to think that great strides could yet be made with regard to the moral (and intellectual) excellence of the general public. And, in his “Reply to Thirlwall,” Mill writes, “Nor have I ever yet heard of any other recipe of making them wise except by giving them knowledge, uncertain as that method may be” (CW XXVI, 305).

Section 4: Taking Precautions Against Fallibility

Our beliefs are fallible and incomplete. And so to be committed to “giving [the people] knowledge” to make them virtuous is to be committed to those social circumstances of discussion and experience that allow for the growth of knowledge. As we saw in the previous chapter, Mill’s chief criticism of the clergy in “The Church” is that they would undermine those progressive conditions of discussion and experience. “Neither the physician nor the engineer is bound down to a particular set of opinions in their respective sciences; the clergyman is” (CW XXVI, 425); the clergy reject the “spirit of universal enquiry” not only because it threatens their social standing, but because it makes the clergy’s efforts to keep everyone on “the right path” more difficult:

How much easier and safer it would be, if [people] could be prevented from enquiring at all – if they could be made to regard the very act of enquiry, nay the very thought of questioning an established opinion, as involving the deepest guilt. It is true that they will not then hold these opinions like rational creatures, but it is of no consequence to the clergy that they should hold them like rational beings, provided they only hold them strongly enough: and no opinions are held so strongly as those which we are taught that it is impious even to demand a reason for.

Such are the motives which induce an endowed clergy to be the enemies of discussion, and as discussion always accompanies improvement they are the enemies of improvement. (Ibid., 426)

Mill argues that to be the enemy of improvement such that one is willing to undermine the conditions of discussion and experience is to take up a position of infallibility. It puts the authority in the position of deciding how to promote the good for others in the future without the benefit of their critical feedback. Assuming that mere preference is not an acceptable basis for decision-making, this could only be justified – Mill seems to suggest – by the infallibility of the authority. But no human being, as he reminds us in *On Liberty*, is infallible: “The beliefs which we have most warrant for, have no safeguard to

rest on, but a standing invitation to the whole world to prove them unfounded... This is the amount of certainty attainable lay a fallible being, and this the sole way of attaining it” (CW XVIII, 232).

The argument concerns not only speech, but our actions as well. He argues at a key juncture at the beginning of Chapter III of *On Liberty* that we must maintain social circumstances in which a diversity of opinions *and* “modes of action” may be expressed:

...the same reasons which show that opinion should be free, prove also that he should be allowed, without molestation, to carry his opinions into practice at his own cost. That mankind are not infallible; that their truths, for the most part, are only half truths; that unity of opinion, unless resulting from the fullest and freest comparison of opposite opinions, is not desirable, and diversity not an evil, but a good, until mankind are much more capable than at present of recognizing all sides of the truth, are principles applicable to men’s modes of action, not less than to their opinions. (Ibid., 260)

Thus, Mill’s instrumental argument for the value of “experiments of living” retains a strongly epistemic character: perhaps above all else, individuality and diversity help us in “recognizing all sides of the truth”. To limit individuality is to invite “the baneful consequences to the intellectual, and through that to the moral nature of man” (Ibid.).

Chapter II, and much of Chapter III, of *On Liberty* focus on the specifically intellectual advantages of free speech and “experiments of living” (Ibid. 261). As we have seen, to undermine those conditions of discussion and experience instrumental to intellectual, and subsequently to social, progress is to fail to take what we saw Mill call “precautions” against our own fallibility (CW XVIII, 229).

In “Civilization,” Mill writes that the main enemy of education is dogmatism: “The principle itself of dogmatic religion, dogmatic morality, dogmatic philosophy, is what requires to be rooted out; not any particular manifestation of that principle” (CW XVIII, 144). A part of rooting out dogmatism, he writes in “Corporation and Church

Property,” is to limit the government’s control of education: “...simply because governments are fallible; and, as they have ample means both of providing and of recommending the education they deem best, should not be allowed to prevent other people from doing the same. No government is entitled (further than is implied in the very act of governing) to make its own opinion the measure of everything which is useful and true” (CW IV, 217). Thus, in “Civilization,” we find that the aim of education should not be to shape everyone in one particular mold, but rather:

...to call forth the greatest possible quantity of intellectual power, and to inspire the intensest love of truth: and this without a particle of regard to the results to which the exercise of that power may lead... for in proportion to the degree of intellectual power and love of truth which we succeed in creating, is the certainty that (whatever may happen in any one particular instance) in the aggregate of instances true opinions will be the result; and intellectual power and practical love of truth are alike impossible where the reasoner is shown his conclusions, and informed beforehand that he is expected to arrive at them. (CW XVIII, 144)

This focus on energy, sincere regard for truth, and the development of intellectual power rather than instruction in a more particular mode of virtuous living, is characteristic of Mill’s commitment to progress.⁴⁴ He argues that the primary aim of government is the ongoing moral and intellectual improvement of individuals, and this improvement involves the development in the population of that same energy and mental vigor just mentioned, to allow for, as he writes in *On Liberty*, “as many possible independent centres of improvement as there are individuals” (CW XVIII, 272). From the knowledge gleaned from these “experiments of living,” other goods may then follow.

⁴⁴By contrast, consider The Old Deluder Act (1647), passed in the Massachusetts Bay Colony under Puritan influence. That Act required that every town of fifty or more households must hire someone to teach children to read and write, in an effort to combat “one chief project of that old deluder, Satan, to keep men from the knowledge of the Scriptures”. The Act presupposed that knowledge and education were conducive to the good, but understood the education to involve the preservation of one set of doctrines rather than the encouragement of intellectual exploration. (*Records of the Governor and Company of the Massachusetts Bay in New England* (1853), II:203)

Section 5: Two Arguments for Individuality

I want now to turn to *On Liberty* in a more sustained way, to argue that its core argument should be understood as a continuation of the foregoing considerations concerning intellectual development. In that essay, Mill argues that where individuals are not free, but subject to a despotic power (whether governmental or social), we find them “cramped”, “dwarfed”, “pinched and hidebound,” “docile”, and “inert and torpid” (CW XVIII, 242, 265, 310, 265). Given power, society will tend to

impose... its own ideas and practices as rules of conduct on those who dissent from them, to fetter the development, and, if possible, prevent the formation of any individuality not in harmony with its ways and compel all characters to fashion themselves upon the model of its own. (CW XVIII, 220)

Reliance on governmental authority, and conformity to custom, drains individuals of their character and energy, turning them into mere “sheep” (CW XVIII, 270) or, what is hardly better, apes: “He who lets the world, or his own portion of it, choose his plan of life for him has no need of any other faculty than the ape-like one of imitation” (Ibid., 262). Despotism, especially the “despotism of custom” (Ibid., 272), makes human beings uniform in their judgments and inclinations, with the result that they have “no character, no more than a steam-engine has a character” (Ibid., 264). Without a wide scope for individuality, “life is reduced nearly to one uniform type” (Ibid., 275) and there is no spontaneous generation of diversity.

Mill asserts in his *Autobiography* that *On Liberty* is a “a kind of philosophic textbook of a single truth,” namely, “...the importance, to man and society, of a large variety in types of character, and of giving full freedom to human nature to expand itself in innumerable and conflicting directions” (CW I, 259). But the “single truth” in fact involves – as I have suggested – two separate arguments, which ultimately feature in different ways

in the text. The former concerns individuality as an important, dominant, or perhaps even essential component of the human good, to be regarded as having “intrinsic worth” (Ibid., 261). On this view, individuality or self-direction is treated as part of Mill’s conception of the human good. I have called this the *intrinsic argument for individuality* because it is an argument for self-development treated as a component of happiness itself. The latter argument concerns, broadly speaking, individuality as an engine of individual and social progress. It concerns the instrumental value, to individuals and society, of a diversity of “experiments of living” (Ibid., 261), of “personal experience” (Ibid., 248, 250, 258), of “eccentricity of conduct” or “originality” (Ibid., 265, 269; 267, 268), of a “high general average of energy” in society (Ibid., 264), and of affording “the opportunities and experience necessary for a correct judgment of great practical affairs” (Ibid., 308). In general, the conditions of “discussion and experience” (Ibid., 231) required for individual and social progress are only available if there is some scope for individuality. I have called this the *instrumental argument for individuality* because it is an argument for self-development and diversity treated as a cause of intellectual and social progress.

In the instrumental argument, Mill argues that social progress is largely a “spontaneous” (Ibid., 224) effect of individual progress, and that allowing for diversity increases, as we saw, the number of “possible independent centres of improvement” (Ibid., 272). This progress through individual diversity depends on the maintenance of certain relatively liberal social conditions. By contrast, the social conformity characteristic of the “despotism of custom” (Ibid.) saps society of the diversity of opinions and “modes of life” (Ibid., 261, 270) that stimulates change and critical exchange. Mill concludes: “A people, it

appears, may be progressive for a certain length of time, and then stop: when does it stop? When it ceases to possess individuality” (Ibid., 273).

It is important to Mill’s position in *On Liberty* that he thinks most people in a “civilized community” (Ibid., 223) are, in fact, capable of intellectual progression. Mill has no illusions about the “collective mediocrity” (Ibid., 268), or “that miscellaneous collection of a few wise and many foolish individuals, called the public” (Ibid., 232), or (as he writes in his *Autobiography*) the “uncultivated herd who now compose the laboring masses” (CW I, 238), but he thinks that most individuals in “all nations with whom we need here concern ourselves” have “attained the capacity of being guided to their own improvement” (CW XVIII, 224) in both opinion and conduct. The capacity of “rectifying... mistakes by discussion and experience” is a relatively low standard, but it is extremely important. For, once it is met, social progress is best fostered by individual development. Individual progress is not only the engine of social progress (“a State which postpones the interests of their mental expansion and elevation... will find that with small men no great thing can really be accomplished...” (Ibid., 310)), but also the standard of social progress (“what more or better can be said of any condition of human affairs, than that it brings human beings themselves nearer to the best thing they can be” (Ibid., 267)).⁴⁵

To see the importance of the instrumental argument for individuality in Mill’s thinking, one might consider that it captures the application to civilized circumstances of

⁴⁵In *RG*, Mill writes: “The first question in respect to any political institutions is, how far they tend to foster in the members of the community the various desirable qualities, moral and intellectual... The government which does this the best has every likelihood of being the best in all other respects, since it is on these qualities, so far as they exist in the people, that all possibility of goodness in the practical operations of the government depends.” (CW XIX, 390)

what in *On Liberty* Mill calls his “progressive principle,” which he suggests is more fundamental to his social and political views than even the liberty principle:

The despotism of custom is everywhere the standing hindrance to human advancement, being in unceasing antagonism to that disposition to aim at something better than customary, which is called, according to circumstances, the spirit of liberty, or that of progress or improvement. The spirit of improvement is not always a spirit of liberty, for it may aim at forcing improvements on an unwilling people: and the spirit of liberty, in so far as it resists such attempts, may ally itself locally and temporarily with the opponents of improvement: but the only unfailing and permanent source of improvement is liberty, since by it there are as many possible independent centres of improvement as there are individuals. The progressive principle, however, in either shape, whether as the love of liberty or of improvement, is antagonistic to the sway of Custom... (CW XVIII, 272)

Although Mill argues that liberty is the “only unfailing and permanent source of improvement,” in fact he acknowledges exceptions to that claim, exceptions that are themselves justified by Mill’s concern to establish conditions of progress. As we have seen, in *On Liberty* Mill argues that in

...backward states of society... a ruler full of the spirit of improvement is warranted in the use of any expedients that will attain an end perhaps otherwise unattainable. Despotism is a legitimate mode of government in dealing with barbarians, provided the end is their improvement and the means justified by actually effecting that end. (Ibid., 224)

In *Representative Government*, he is forthright in stating that liberty is only conducive to progress in certain circumstances:

Thus (to repeat a former example), a people in a state of savage independence, in which every one lives for himself, exempt, unless by fits, from any external control, is practically incapable of making any progress in civilisation until it has learnt to obey. The indispensable virtue, therefore, in a government which establishes itself over a people of this sort is, that it make itself obeyed. To enable it to do this, the constitution of the government must be nearly, or quite, despotic. A constitution in any degree popular, dependent on the voluntary surrender by the different members of the community of their individual freedom of action, would fail to enforce the first lesson which the pupils, in this stage of their progress, require. Accordingly, the civilisation of such tribes, when not the result of juxtaposition with others already civilised, is almost always the work of an

absolute ruler, deriving his power either from religion or military prowess; very often from foreign arms. (CW XIX, 394)

Liberty is valuable only in certain states of society or for individuals of certain capacities.

Under certain other circumstances (though not in a “civilized” society), despotism can be legitimate, but as soon as the individuals living in that society are capable of thinking critically about themselves and others, we should adopt the course of *On Liberty*’s

“spontaneous progress” (CW XVIII, 224) associated with having “as many possible independent centres of improvement as there are individuals.”⁴⁶ After a certain point, he writes in *Representative Government*, progress requires individual liberty:

The Egyptian hierarchy, the paternal despotism of China, were very fit instruments for carrying those nations up to the point of civilization which they attained. But having reached that point, they were brought to a permanent halt, for want of mental liberty and individuality; requisites of improvement which the institutions that had carried them thus far, entirely incapacitated them from acquiring; and as the institutions did not break down and give place to others, further improvement stopped. (CW XIX, 396)

In civilized circumstances, liberty may also be restricted temporarily in “cases of extreme exigency” that threaten the society’s very existence, but only in order to return a civilized society to those liberal conditions instrumental to progress. It is an exception that proves the rule:

⁴⁶For a practical application of this kind of thinking, see Mill’s discussion of state education in Chapter V of *On Liberty*: “All that has been said of the importance of individuality of character, and diversity in opinions and modes of conduct, involves, as of the same unspeakable importance, diversity of education. A general State education is a mere contrivance for moulding people to be exactly like one another: and as the mould in which it casts them is that which pleases the predominant power in the government, whether this be a monarch, a priesthood, an aristocracy, or the majority of the existing generation, in proportion as it is efficient and successful, it establishes a despotism over the mind, leading by natural tendency to one over the body. An education established and controlled by the State, should only exist, if it exist at all, as one among many competing experiments, carried on for the purpose of example and stimulus, to keep the others up to a certain standard of excellence. Unless, indeed, when society in general is in so backward a state that it could not or would not provide for itself any proper institutions of education, unless the government undertook the task; then, indeed, the government may, as the less of two great evils, take upon itself the business of schools and universities, as it may that of joint-stock companies, when private enterprise, in a shape fitted for undertaking great works of industry does not exist in the country.” (CW XVIII, 302)

I am far from condemning, in cases of extreme exigency, the assumption of absolute power in the form of a temporary dictatorship. Free nations have, in times of old, conferred such power by their own choice, as a necessary medicine for diseases of the body politic which could not be got rid of by less violent means. But its acceptance, even for a time strictly limited, can only be excused, if, like Solon or Pittacus, the dictator employs the whole power he assumes in removing the obstacles which debar the nation from the enjoyment of freedom. (CW XIX, 403)

The despot who rules over a backward state of society may be justified in his rule if he brings those living under him closer to the point of becoming individual centers of improvement. At that point, however, despotism is no longer justified, except in cases of extreme exigency, when the very possibility of progress is threatened. If liberty is justified on instrumental, progressive grounds, so are exceptions to doing so, on Mill's view.

In *On Liberty*, Mill rejects "any advantage which could be derived to my argument" from considerations other than utility. Utility, however, is meant to be taken in its "largest sense, grounded in the permanent interests of man as a progressive being" (CW XVIII, 224). It is central to Mill's argument in *On Liberty* that the "permanent interests of man as a progressive being" include those very conditions of discussion and experience that Mill takes to be central to the possibility of our intellectual improvement. Mill's rejection in the same passage of the "idea of abstract right, as a thing independent of utility" should also inform our sense of "the permanent interests of man as progressive being". In his *System of Logic*, in a passage critical of the "geometrical" method of thinking about political affairs, he writes:

I speak of those who deduce political conclusions... from unbending practical maxims. Such, for example, are all who found their theory of politics on what is called abstract right, that is to say, on universal precepts; a pretension of which we have already noticed the chimerical nature. Such, in like manner, are those who make the assumption of a social contract, or any other kind of original obligation, and apply it to particular cases by mere interpretation. But in this the fundamental error is the attempt to treat an art like a science... (CW VIII, 888-889)

Mill does not deny that there may be universal laws of human behavior in the sense that human beings are parts of the natural world, and the natural world is governed by universal laws of nature. But we should not expect to find “unbending practical maxims” for the achievement of the general good or happiness. This echoes other statements concerning the nature of his consequentialism (e.g.: in *Utilitarianism*, “It is not the fault of any creed, but of the complicated nature of human affairs, that rules of conduct cannot be so framed as to require no exceptions...” (CW X, 225)). The point is not merely that rules in a given social circumstance are not absolute, but that social circumstances change – including in our personal development and the state of human understanding – and that it is therefore very unlikely that some one set of rules for the direction of human affairs would apply in all circumstances. Progress for Mill is often a matter of adaptation to new circumstances, as in the context of his discussion of intellectual progress in *On Liberty*: “Even progress, which ought to superadd, for the most part only substitutes, one partial and incomplete truth for another: improvement consisting chiefly in this, that the new fragment of truth is more wanted, more adapted to the needs of the time, than that which it displaces” (CW XVIII, 252). The permanent interests of man as a progressive being, then, include the ongoing development of our mental capacities and the growth of knowledge that allow us to adapt to, improve, and produce practical maxims appropriate to, our circumstances.

Section 6: “Mental and Moral Progression”

In what does the mental and moral progress of individuals consist? As we saw, in *Principles of Political Economy* (1848), Mill states that a legitimate political order should be consistent with:

...that multiform development of human nature, those manifold unlikenesses, that diversity of tastes and talents, and variety of intellectual points of view, which not only form a great part of the interest of human life, but by bringing intellects into stimulating collision, and by presenting to each innumerable notions that he would not have conceived of himself, are the mainspring of mental and moral progression.⁴⁷ (CW III, 978n)

Mill consistently takes the protection of these conditions of progress to be *the* practical concern of civilized social and political life. But the phrase “mental and moral progression” is somewhat ambiguous, given Mill’s uses of the terms “mental” and “moral”. “Mental progression” plausibly refers to what Mill sometimes calls “intellectual” improvement, i.e. improvement of our ability to discern truth and improvement in the truth of our opinions or beliefs. “Moral progression,” by contrast, might plausibly refer to character development, including our dispositions to act in certain ways, or what Mill also calls our “spiritual” health and development.⁴⁸ But Mill sometimes employs the term “mental” to cover *both* the intellectual and dispositional, so one must be careful not to read every “mental” as referring to only intellectual matters.

⁴⁷The context of this comment is Mill’s discussion of whether Communism could be a satisfactory social order.

⁴⁸In *On Liberty*, Mill writes, e.g., “...different persons also require different conditions for their spiritual development; and can no more exist healthily in the same moral, than all the variety of plants can in the same physical atmosphere and climate.” (CW XVIII, 270). This use of ‘moral’ as relating to psychological or spiritual health was common in Mill’s day, and resonates today in phrases such as “moral support.” I linger on this point in Chapter 5, on Mill’s supposed anti-moralism. In his 1838 essay on Bentham, we find, in place of “moral” and “physical,” a criticism of Bentham’s “theory of life” in terms of its effect on the “spiritual” and “material”: “It will enable a society which has attained a certain state of spiritual development, and the maintenance of which in that state is otherwise provided for, to prescribe the rules by which it may protect its material interests. It will do nothing (except sometimes as an instrument in the hands of a higher doctrine) for the spiritual interests of society; nor does it suffice of itself even for the material interests” (CW X, 99).

“Mental” on a more encompassing reading includes everything that might figure in judgment, including one’s dispositions. In that case, “moral progression” might then refer specifically to our progress *in conduct*. This is suggested, for example, by maintaining a parallel construction in the following passage:

...a quality of the human mind, the source of everything respectable in man, either *as an intellectual or as a moral being*, namely, that his errors are corrigible. He is capable of rectifying his mistakes by discussion and experience... Wrong *opinions and practices* gradually yield to fact and argument: but facts and arguments, to produce any effect on the mind, must be brought before it... In the case of any person whose judgment is really deserving of confidence, how has it become so? Because he has kept his mind open to criticism of his *opinions and conduct*. (CW XVIII, 231, 232; emphasis added)

But this reading in turn needs clarification because “morality,” for Mill, concerns the evaluation of the rightness of our other-regarding, but not self-regarding, conduct (CW XVIII, 279). To complicate matters more, “morality” also concerns our other-regarding *dispositions*, which influence other-regarding conduct but which are not themselves parts of conduct:

Cruelty of disposition; malice and ill-nature; that most anti-social and odious of all passions, envy; dissimulation and insincerity, irascibility on insufficient cause, and resentment disproportioned to the provocation; the love of domineering over others; the desire to engross more than one's share of advantages...; the pride which derives gratification from the abasement of others; the egotism which thinks self and its concerns more important than everything else, and decides all doubtful questions in his own favor; — *these are moral vices, and constitute a bad and odious moral character: unlike the self-regarding faults previously mentioned*, which are not properly immoralities, and to whatever pitch they may be carried, do not constitute wickedness. (Ibid.; emphasis added)

What seems most reasonable, then, is to associate “moral progression” with improvement in both our other-regarding conduct and dispositions. As Mill writes in his essay on Bentham (1838):

Morality consists of two parts. One of these is self-education; the training, by the human being himself, of his affections and will... The other and co-equal part, the

regulation of his outward actions, must be altogether halting and imperfect without the first, for how can we judge in what manner many an action will affect the worldly interests of ourselves or others, unless we take in, as part of the question, its influence on the regulation of our, or their affections and desires” (CW X, 98)

This fits nicely with *On Liberty*, in which Mill seems to have both our dispositions and our “outward actions” in mind: “Whenever, in short, there is a definite damage, or a definite risk of damage, either to an[other] individual or to the public, the case is taken out of the province of liberty, and placed in that of morality or law” (CW XVIII, 279).⁴⁹

“Mental and moral progression” should therefore be read to encompass all of the above considerations. Mill is concerned with the improvement of individual opinion, disposition, and conduct, however we label them. With all of this in mind, he argues for the “multiform development of human nature”, the “diversity of tastes and talents,” and “the variety of intellectual points of view,” which all in “stimulating collision” work to improve both individual judgment about how to live and the implementation of that judgment in practice.

Section 7: The Progressive Aim of Government

In the foregoing, I have tried to reveal the constancy within Mill’s thought of his commitment to progress, and to its intellectual and specifically epistemic component. The argument has as its conclusion that civilized society must maintain – except in cases of “extreme exigency” – those liberal social arrangements that provide the conditions of discussion and experience. This progressive argument is at the core of Mill’s political

⁴⁹Alan Ryan’s invaluable work on Mill has highlighted the importance of understanding Mill’s conception of morality as other-regarding: “Morality is concerned with social relations, with dealings with other people.” See his “John Stuart Mill’s Art of Living,” in Gray and Smith, eds. *On Liberty in Focus* (Routledge: New York, 1991), p. 164.

thought. If the state is justified on the grounds that without it there is no hope for the cooperative activity that jumpstarts progress, Mill then argues for basic liberal social arrangements on the ground that – once individuals have developed cooperative habits and are capable of thinking for themselves – the provision of social conditions supporting individuality and diversity, in both opinion and action, offers the best chance at continued social progress.

The centrality of this argument in Mill's thought is reinforced by a consideration of *Representative Government*, in which Mill emphasizes the progressive aim of his political designs, arguing that the moral and intellectual improvement of the individuals living within the society is *the* primary aim of government:

If we ask ourselves on what causes and conditions good government in all its senses, from the humblest to the most exalted, depends, we find that the principal of them, the one which transcends all others, is the qualities of the human beings composing the society over which the government is exercised... Government consists of acts done by human beings; and if the agents, or those who choose the agents, or those to whom the agents are responsible, or the lookers-on whose opinion ought to influence and check all these, are mere masses of ignorance, stupidity, and baleful prejudice, every operation of government will go wrong; while, in proportion as the men rise above this standard, so will the government improve in quality; up to the point of excellence, attainable but nowhere attained, where the officers of government, themselves persons of superior virtue and intellect, are surrounded by the atmosphere of a virtuous and enlightened public opinion. *The first element of good government, therefore, being the virtue and intelligence of the human beings composing the community, the most important point of excellence which any form of government can possess is to promote the virtue and intelligence of the people themselves.* The first question in respect to any political institutions is, how far they tend to foster in the members of the community the various desirable qualities, moral and intellectual... The government which does this the best has every likelihood of being the best in all other respects, since it is on these qualities, so far as they exist in the people, that all possibility of goodness in the practical operations of the government depends. (CW XIX, 389, 390-391; emphasis added)

Mill argues that, in order to promote social progress and good government we ought to focus our practical energies on the moral and intellectual improvement of those living within society. And thus:

...the one indispensable merit of a government, in favour of which it may be forgiven almost any amount of other demerit compatible with progress, is that its operation on the people is favourable, or not unfavourable, to the next step which it is necessary for them to take, in order to raise themselves to a higher level. (Ibid., 394)

Once we are properly focused on the conditions that help in developing individuals (and in staving off social deterioration), we can see that “[c]onduciveness to Progress, thus understood, includes the whole excellence of a government” (Ibid., 388).

We have seen that Mill thinks the imposition of despotism is justified to raise individuals out of savage existence. But once individuals of a basic rational capacity have entered civilized society, he argues on progressive grounds that despotism must be overthrown in favor of a more diffused social organization. Those who wish for despotism “leave out of the idea of good government its principal element, the improvement of the people themselves” (Ibid., 403). A despot’s standing as a despot depends on his willingness to “put down opposition”. But the fear of this is enough to stifle what Mill in *On Liberty* calls the “atmosphere of freedom” (CW XVIII, 267) that provides the real possibility of progress. So, he argues, the concern for progress should drive civilized individuals away from monarchy and toward democracy. A monarch who is responsive to dissent hardly remains monarch: “he is no longer a despot, but a constitutional king; an organ or first minister of the people” (Ibid., 402).

This argument is limited, however. It gives us some reason, on progressive grounds, to think that “the ultimate controlling power” should rest in the hands of the people rather

than a despot, but it does not yet tell us what form of democratic arrangement would best serve the general good. In fact, in a series of writings culminating in *Representative Government*, he opts for a kind of representative democracy in which the “actual conduct of affairs” is to be turned over to “the acquired knowledge and practiced intelligence of a specially trained and experienced Few” (CW XIX, 433-434).

In the next chapter, I therefore turn to the “organizational” element of Mill’s theory of government, which focuses on what he calls the “machinery” of government . If what we have seen so far is a basic argument for liberal social arrangements, and that this argument has a strongly epistemic element focused on the growth of knowledge, we have yet to see how Mill’s concern with epistemic considerations might express itself in more specific organizational recommendations or political designs. The first aim of government is to improve “the moving force which works the machinery” of social and political life, but the “second constituent element of the merit of a government” is “the quality of the machinery itself” (CW XIX, 390). But what should now be clear is that all of his recommendations will fit within a framework committed in the first instance to the conditions of progress.

Chapter Three

Organization, Jurisdiction, and Expertise

Section 1: Introduction

In the previous chapters, I have attempted to reveal the centrality of Mill's commitment to progress as a political principle, and the important role that the improvement of our understanding through discussion and experience plays in his account of progress. Any realistic hope of progress, Mill argues, depends on the availability of new ideas and modes of life, as well as critical discourse that allows us to learn from our mistakes. Once cooperative society has been established, the cause of social progress – which Mill regards as the primary aim of government – provides an argument for basic liberal social arrangements, including free speech and experiments of living. But the progressive argument alone does not dictate a specific form of liberal government.

In this chapter I explore the structure of Mill's organizational recommendations, i.e. the argumentative framework he deploys to justify a variety of political arrangements and institutions, including a plural voting scheme, proportional representation, a legislative commission for writing policy, and representative democracy itself. This requires looking beyond his most famous essays, *On Liberty* (1859) and *Utilitarianism* (1861), to a variety of less theoretical writings, notably *Considerations on Representative Government* (1861). In the next chapter, I return to *On Liberty* and argue that the limits

on social coercion dictated by Mill's famous liberty (or harm) principle should be understood to be justified on the same general grounds as his other organizational recommendations.

In *Representative Government*, Mill presents a two-fold account of good government, encompassing the aims of (1) social progress or improvement and (2) effective organization of decision-making resources. There are two key considerations that go into the organizational question: (a) identity of interest between government and the public and (b) expertise. We have seen that Mill argues that social and political "machinery"⁵⁰ must be first geared toward progress. But as early as 1832 (and perhaps earlier) Mill expresses elements of his political design framework that focus on accomplishing the two main "organizational" aims of maintaining the focus of the rulers on the general good and bringing to bear the greatest available expertise on social and political problems.

The progressive aim is for Mill "the criterion of good government," but we have seen that different social and political circumstances may require different institutions for progress. In the last chapter we explored Mill's instrumental argument for liberal social institutions in civilized society, on the basis of their contribution to intellectual progress. Liberal social arrangements secure those conditions of "discussion and experience" so important to intellectual progress, without which there is no reasonable hope of improving our decision-making. For a "civilized" society like ours, the progressive aim requires, above all, that we maintain the social conditions underlying the diversity of opinion and "modes of life".

⁵⁰For an early use of this language, see "The Corporation Bill" (1833), CW XXIII, 630.

In *Representative Government*, Mill then asks: within the range of options compatible with our commitment to progress, how can we best organize ourselves for the management of current affairs? Within what is required for progress, Mill balances expertise and identity of interest considerations to further specify a series of social and political practices and institutions for a “civilized” society like ours: “The *positive* evils and dangers of the representative, as of every other form of government, may be reduced to two heads: first, general ignorance and incapacity, or, to speak more moderately, insufficient mental qualifications, in the controlling body; secondly, the danger of its being under the influence of interests not identical with the general welfare of the community” (CW XIX, 436). The “identity of interest” consideration is central to his organizational thinking, as in his rejection of aristocratic government on the ground that its rulers have a strong tendency to be at odds with the public good. But, in my discussion, I will focus on his attention to designing institutions that give expression to “wisdom,” or expertise. In the next chapter, I will then argue that this epistemic aspect of Mill’s organizational aim provides the rationale for his famous liberty (or harm) principle.⁵¹

⁵¹By far the most influential study of *Representative Government*, and therefore of Mill’s political designs, is Dennis Thompson’s *John Stuart Mill and Representative Government* (Princeton, NJ: Princeton University Press, 1976). Thompson argues that Mill’s book is structured by two “very general criteria” of good government, captured by a “protective goal” and an “educative goal”. The protective goal concerns government as an instrument for securing the general interest by making use of the goods available within society, while the educative goal concerns government as an instrument for the intellectual and moral improvement of the individuals living under it. His “protective” and “educative” goals therefore parallel my “organizational” and “progressive” aims. However, he then argues that, in pursuit of these two goals, Mill balances two “coequal” practical principles: “the principle of participation,” according to which “the participation of each citizen be as great as possible,” and “the principle of competence,” according to which “the influence of the more qualified citizens should be as great as possible”. (See Thompson, p. 9 and pp. 175f.) I think this misrepresents Mill’s practical approach, insofar as (1) the progressive goal takes priority over the organizational goal, (2) participation and competence concern primarily the organizational goal, and (3) Mill is not committed to the greatest possible participation of each, so much as he is committed to whatever is required to maintain the identity of interest between rulers and the ruled, and to the intellectual and moral development of individuals.

The concern with expertise is a recurring part of Mill's political writings over time. For example, his discussion of "pledges" – of whether voters should secure promises from their representatives in exchange for their votes – proceeds along almost identical lines in Chapter XII of *Representative Government* in 1861 as in his *Examiner* articles from 1832. In both instances, Mill argues that exacting pledges from those elected for their superior expertise in political matters would be irrational or unwise. In "Corporation Bill" (1833), in the *Examiner*, Mill remarks approvingly:

We are gradually emerging from a dark period in which mental capacity (with a few exceptions which, when correctly analysed, are scarcely exceptions) was not regarded at all, as a criterion of fitness for high station and power. We are about to enter into a period in which capacity, or the reputation of capacity, will be the *sole* criterion." (CW XXIII, 633)

This expertise consideration figures prominently in Mill's support not only for representative, rather than direct, democracy, but also for a series of more specific recommendations. Because Mill wrote about so many policy and institutional issues, there is a wealth of material from which to glean his theoretical commitments.

Besides *Representative Government*, I will look primarily at his "Thoughts on Parliamentary Reform" (1859), "Recent Writers on Reform" (1859), and his "Appendix to *Dissertations and Discussions*, Vol. I" (in its 1859 form, but first published in 1835). It bears mentioning that these three works appeared the same year as *On Liberty* and just two years prior to the publication of *Utilitarianism* and *Representative Government*. Central to my approach is the thought that Mill was, or tried to be, a systematic moral and political advocate.

With this in mind, it is important to broach a key distinction that arises in examining Mill's organizational framework. He repeatedly distinguishes two kinds of

questions about (social or) governmental interference: one concerning the legitimacy, propriety, or rightfulness of governmental interference (the jurisdictional question), which is independent of whatever effects in fact result in a given case, and the other concerning the actual good and bad consequences of governmental interference (justificatory question). As a practical matter, the jurisdictional question, for Mill, pre-emptes answering the justificatory question. He does not determine whether some proposed governmental intervention is proper by *himself* running a tally of all the actual good and bad consequences that would likely result on one account or another, but rather by identifying the domains in which different parties are more likely than others to make a good decision, and then letting those parties run the tally of consequences in those domains. Consider an everyday sort of example. If Mill were asked how my children should be educated, there are two sorts of answers he might give: first, he might himself run the tally of consequences in light of his own understanding of education theory and of my children in order to produce a recommendation; second, he might argue that because the parents of my children are more likely to make a good decision about their education than he is, his recommendation would be to do what they decide. In much of Mill's practical thought, and in his organizational designs in particular, it becomes clear that Mill's first move is to assign jurisdiction, and this assignment is done by appeal to relative expertise and identity of interest rather than to his own tally of the likely consequences in the particular case. This may seem to be a rather straightforward point, but keeping it forward in one's mind is, I believe, the key to understanding the structure of his political thought. For example, in *Representative Government*, he begins his discussion of good government by focusing on the jurisdictional question of "the proper

functions of a government” or “the legitimate sphere of governmental functions” within which “the goodness of a government is necessarily circumscribed” (CW XIX, 383).⁵²

We should not expect to find Mill’s answer to this question by appeal to his own sense of when governmental interference is, or is not, beneficial. Rather, Mill argues that a conscientious government’s actions are proper or rightful only when it satisfies the conditions of relative expertise and identity of interest. What a government or individual *rightfully* does might not be *right*, if it leads to bad consequences: “It is not however a necessary consequence that because a thing might rightfully be done, it is always expedient to do it.”⁵³ But, Mill suggests, even optimal consequences cannot excuse a government action that is not rightfully performed. The importance of the distinction between jurisdiction (the assignment of decisional authority) and justification (the tallying of goods and harms) is reinforced, we shall see, by a number of passages in *On Liberty*⁵⁴ and elsewhere. The rest of this chapter is occupied with building support for this interpretation of his organizational project.

⁵²Interestingly, in Mill’s discussion, the “badness” of a government is *not* limited to its actions within its legitimate sphere. This suggests an interesting view of good and bad government interference, according to which (1) government can do good (in some sense) only in those matters over which it has jurisdiction, whatever good consequences that may in fact result from overstepping those bounds, and (2) actions can be bad in two ways: by violating the bounds of one’s jurisdiction and by having bad consequences. Briefly, it would seem that interference can be good only where it is rightful or legitimate, but it can be bad (in some sense) whether it is rightful or not. Mill grappled with this issue (of the right and the rightful) throughout his moral and political work. For the key discussion of these issues in his moral philosophy, see *Utilitarianism*, Chapter V. The “proper” function of government is also the subject of the opening paragraphs of Book V, Chapter 11 of his *Principles of Political Economy* and occupies a large part of *On Liberty*.

⁵³Letter to James Beal, *CW XVI*, 1033.

⁵⁴See *On Liberty* I.13; III.3; V.1-2; V.4; V.8 for further expressions of the jurisdictional component.

Section 2: Expertise, Identity of Interest, and the Rejection of Direct Democracy

In his Appendix to *Dissertations and Discussions*, Vol. I, published in 1859 but incorporating work from 1835, Mill offers his most concise, general account of organizational issues of good government. He begins: “From the principle of the necessity of identifying the interest of the government with that of the people, most of the practical maxims of a representative government are corollaries” (CW XIX, 648). We saw that the argument from progress leads Mill to reject despotism in civilized society, but a second key argument in favor of democracy concerns the identity of interest between government and the people. The ultimate aim of government for Mill is the general good, and a key element of any political system’s ability to realize that good is that it remains concentrated on doing so: “All popular institutions are means towards rendering the identity of interest more complete” (Ibid., 648). Perfect identity of interest between a government and the people is not possible, but it is “an end to be incessantly aimed at, and approximated to as nearly as circumstances render possible, and as is compatible with the regard due to other ends” (Ibid., 649).

The other main organizational element, he argues, is to provide for the expression of expertise in the pursuit of the general good. This leads him to *representative* rather than direct democracy:

The only end, liable occasionally to conflict with that which we have been insisting on, and at all comparable to it in importance--the only other condition essential to good government is this: That it be government by a select body, not by the public collectively: That political questions be not decided by an appeal, either direct or indirect, to the judgment or will of an uninstructed mass, whether of gentlemen or of clowns; but by the deliberately formed opinions of a comparatively few, specially educated for the task. (CW XIX, 649)

Mill insists that the aims of expert government and identity of interest by democratic control needn't be at odds:

What is necessary, however, to make the two ends perfectly reconcilable, is a smaller matter than might at first sight be supposed. It is not necessary that the many should themselves be perfectly wise; it is sufficient if they be duly sensible of the value of superior wisdom. It is sufficient if they be aware, that the majority of political questions turn upon considerations of which they, and all persons not trained for the purpose, must necessarily be very imperfect judges; and that their judgment must in general be exercised rather upon the characters and talents of the persons whom they appoint to decide these questions for them, than upon the questions themselves. They would then select as their representatives those whom the general voice of the instructed pointed out as the *most* instructed; and would retain them, so long as no symptom was manifested in their conduct, of being under the influence of interests or of feelings at variance with the public welfare. This implies no greater wisdom in the people than the very ordinary wisdom, of knowing what things they are and are not sufficient judges of. If the bulk of any nation possess a fair share of this wisdom, the argument for universal suffrage, so far as respects that people, is irresistible; for the experience of ages, and especially of all great national emergencies, bears out the assertion, that whenever the multitude are really alive to the necessity of superior intellect, they rarely fail to distinguish those who possess it. (Ibid., 650)

Ultimate control should rest with the populace as a check on power, to keep it from “being under the influence of interests or of feelings at variance with the public welfare,” but the actual decision-making authority ought to rest with those “most instructed,” “of superior intellect,” or “of superior wisdom,” i.e. experts.

In no government will the interests of the people be the object, except where the people are able to dismiss their rulers as soon as the devotion of those rulers to the interests of the people becomes questionable. But this is the only fit use to be made of popular power. Provided good intentions can be secured, the best government (need it be said?) must be the government of the wisest, and these must always be a few.” (Ibid., 651)

In principle, he argues, one can have good government without “accountability to the people” (Ibid., 649), as in Prussia and India, but it requires fortunate circumstances that can't be “reckoned upon” (Ibid., 650).

The idea of a rational democracy is, not that the people themselves govern, but that they have security for good government. This security they cannot have by any other means than by retaining in their own hands the ultimate control. If they renounce this, they give themselves up to tyranny. A governing class not accountable to the people are sure, in the main, to sacrifice the people to the pursuit of separate interests and inclinations of their own.” (Ibid., 650)⁵⁵

The balance of expertise and identity of interest, within the constraints set by the progressive aim, captures the entirety of Mill’s thought about the fundamental design of political institutions, resulting most notably in his commitment to representative government:

...the grand difficulty in politics will for a long time be, how best to conciliate the two great elements on which good government depends; to combine the greatest amount of the advantage derived from the independent judgment of a specially instructed few, with the greatest degree of the security for rectitude of purpose derived from rendering those few responsible to the many. (Ibid.)

Good despots, he writes in *Representative Government*, are mere “happy accidents” (CW XIX, 419). The decision-making authority accorded to the wise must therefore remain ultimately accountable to the general populace. But it must also not undermine the progressive conditions of discussion and experience that allow for the criticism and improvement of the government. If we pull these elements together, we arrive at a unified structure of good government:

The interest of the people is, to choose for their rulers the most instructed and the ablest persons who can be found; and having done so, to allow them to exercise their knowledge and ability for the good of the people, under the check of the freest discussion and the most unreserved censure, but with the least possible direct interference of their constituents--as long as it *is* the good of the people, and not some private end, that they are aiming at. A democracy thus administered would unite all the good qualities ever possessed by any government. Not only would its ends be good, but its means would be as well chosen as the wisdom of

⁵⁵See also Mill’s discussion of the possibility of a “good despotism” in Chapter III of *Representative Government*, CW XIX, 399-403. He there also emphasizes, in mind of the progressive aim, that a despot, in order to remain a despot, will at some point need to “put down opposition,” thereby undermining “such freedom of the press and of discussion as would enable a public opinion to form and express itself on national affairs” (CW XIX, 402).

the age would allow; and the omnipotence of the majority would be exercised through the agency and according to the judgments of an enlightened minority, accountable to the majority in the last resort.” (Ibid., 651)

Mill is not suggesting that such a government would always do right in terms of the actual consequences of its actions. But the decisions of such a government would be rightful, in the sense that they would be the mandates of a “rational democracy” combining, as effectively as is feasible, the proper aim of government (the general good) and the best beliefs about how to achieve that aim. Mill could reasonably be seen as offering an updated version of Plato’s ideal system, in which experts focused on the common good retain decision-making authority, but in which Mill tries to accommodate the fact that human beings are fallible. In an 1866 review of Grote’s *Plato and the other Companions of Socrates*, Mill invites this interpretation:

In the political theory thus conceived by Plato—confining ourselves to his scheme of the ideally best, and neglecting his compromise with existing obstacles in the comparatively tame production of his decline—there are two things specially deserving of remark. First, the vigorous assertion of a truth, of transcendent importance and universal application—that the work of government is a Skilled Employment; that governing is not a thing which can be done at odd times, or by the way, in conjunction with a hundred other pursuits, nor to which a person can be competent without a large and liberal general education, followed by special and professional study, laborious and of long duration, directed to acquiring, not mere practical dexterity, but a scientific mastery of the subject. This is the strong side of the Platonic theory. Its weak side is, that it postulates infallibility, or something near it, in rulers thus prepared; or else ascribes such a depth of comparative imbecility to the rest of mankind, as to unfit them for any voice whatever in their own government, or any power of calling their scientific ruler to account. (CW XI, 435-436)

Mill is a democrat, but expertise considerations provide much of his rationale for representative democracy, and for other more particular features of representative government. I turn now to some of these other designs.

Section 3: Universal Suffrage, Plural Voting, and Proportional Representation

In his “Thoughts on Parliamentary Reform,” Mill proposes an ideal redesign of the electoral system. He argues that in British society there should be universal suffrage, but denies that the votes of each person should count equally. Universal suffrage has many good effects. It is a means to “elevate the mind to large interests and contemplations; the first step out of the narrow bounds of individual and family selfishness” (CW XIX, 322). As “one of the chief instruments both of moral and of intellectual training for the popular mind” (Ibid., 323), and by developing in the controlling democratic populace what he calls in *Representative Government* a “feeling for the general interest” (CW XIX, 412), voting becomes an effective check on the identity of interest. Even when much of the populace lacks proper concern for the general good, universal suffrage remains beneficial, as we saw above, as a check on the excesses of those in power by making it more difficult for the interests of one person or class to dominate, and by forcing those in power to consider the reception of their decisions:

The notion is itself unfounded, that publicity, and the sense of being answerable to the public, are of no use unless the public are qualified to form a sound judgment...To be under the eyes of others--to have to defend oneself to others--is never more important than to those who act in opposition to the opinion of others, for it obliges them to have sure ground of their own. Nothing has so steadying an influence, as working against pressure. Unless when under the temporary sway of passionate excitement, no one will do that which he expects to be greatly blamed for, unless from a preconceived and fixed purpose of his own; which is always evidence of a thoughtful and deliberate character, and, except in radically bad men, generally proceeds from sincere and strong personal convictions. Even the bare fact of having to give an account of their conduct, is a powerful inducement to adhere to conduct of which, at least, some decent account can be given. (Ibid., 493)

But Mill does not think these considerations in favor of universal suffrage also justify an equal vote for each person. In “Thoughts on Parliamentary Reform,” he writes: “Now, it can in no sort be admitted that all persons have an equal claim to power over others. The claims of different people to such power differ as much, as their qualifications for exercising it beneficially” (Ibid., 323). Voting is an exercise of power over others, and must be treated like other such exercises, as more an earned privilege than a natural right. And what it takes to earn this privilege has a key epistemic component:

There is no such thing in morals as a right to power over others; and the electoral suffrage is that power. When all have votes, it will be both just in principle and necessary in fact, that some mode be adopted of giving greater weight to the suffrage of the more educated voter; some means by which the more intrinsically valuable member of society, the one who is more capable, more competent for the general affairs of life, and possesses more of the knowledge applicable to the management of the affairs of the community, should, as far as practicable, be singled out, and allowed a superiority of influence proportioned to his higher qualifications. (Ibid., 324)

To grant equal votes to people of different qualifications is “reversing all the rules of rational conduct” (Ibid., 323). In the pursuit of our political ends, expertise is, with identity of interest, the key condition on jurisdiction:

...some sort of educational qualification is required by principle. We must never lose sight of the truth, that the suffrage for a member of Parliament is power over others, and that to power over others no right can possibly exist. Whoever wishes to exercise it, is bound to acquire the necessary qualifications, as far as their acquisition is practicable to him. I have expressed my conviction that in the best possible system of representation, every person without exception would have a vote; but this does not imply that any one should have it unconditionally... (CW XIX, 326-327)

Who, then, should get more votes than others? Mill does not mean that voters must have a certain degree of formal schooling, only that they can demonstrate in some way a

certain level of intelligence or expertise. Children and barbarians do not have the intellectual prerequisites for voting.⁵⁶ After that, Mill recognizes strata of qualifications:

...a person who cannot read, is not as good, for the purpose of human life, as one who can. A person who can read, but cannot write or calculate, is not as good as a person who can do both. A person who can read, write and calculate, but who knows nothing of the properties of natural objects, or of other places and countries, or of the human beings who have lived before him, or of the ideas, opinions, and practices of his fellow-creatures generally, is not so good as a person who knows these things. A person who has not, either by reading or conversation, made himself acquainted with the wisest thoughts of the wisest men, and with the great examples of a beneficent and virtuous life, is not so good as one who is familiar with these. A person who has even filled himself with this various knowledge, but has not digested it--who could give no clear and coherent account of it, and has never exercised his own mind, or derived an original thought from his own observation, experience, or reasoning, is not so good, for any human purpose, as one who has. There is no one who, in any matter which concerns himself, would not rather have his affairs managed by a person of greater knowledge and intelligence, than by one of less. There is no one who, if he was obliged to confide his interest jointly to both, would not desire to give a more potential voice to the more educated and more cultivated of the two.” (CW XIX, 323-324)

The result of these observations is the proposal of a plural voting system according to which votes would be allocated as follows: 1 vote – ordinary unskilled laborer; 2 votes – skilled laborer; 3 votes – foreman or “superintendent of labor”; 3-4 votes – farmer, manufacturer, or trader; 5-6 votes – professional requiring “systematic mental cultivation” including lawyer, physician or surgeon, clergy, literary person, artist, or public functionary; 5-6 (or more) votes – university graduate or member of a learned society (see CW XIX, 324-325). In case this allocation misjudges some individual, “there ought to be an organization of voluntary examinations... at which any person whatever might present himself, and obtain, from impartial examiners, a certificate of his possessing the acquirements which would entitle him to any number of votes” (Ibid.,325). And wealth should be no consideration in this allocation.

⁵⁶CW XIX, 324.

Mill recognizes that such a system is unlikely to be adopted, and so he recommends extending suffrage, but in accordance with a basic “educational qualification” (Ibid., 326, 328) including the ability to read and write, and to perform simple arithmetic (Ibid., 327). He also then goes on to defend a system of proportional representation and to reject the secret ballot.

In a related piece, “Recent Writers on Reform” (1859), Mill vigorously endorses the voting scheme proposed by Thomas Hare to improve minority representation in government, according to which a voter who does not like the local options for representative office, but who finds himself in a minority, can choose to vote for a candidate in another district. The advantages of this come chiefly in limiting the chance of a party with slight majority support in every district of obtaining all of the representative seats. But it also, Mill writes, would “prodigiously improve the *personnel* of the national representation” because it would provide an opportunity for someone of great “personal merit” to draw votes from all over the country and have a chance against some “local grandee” (CW XIX, 362): “Those voters who did not like either of the local candidates, or who believed that one whom they did not like was sure to prevail against them, would have all the available intellectual strength of the country from whom to select the recipient of their otherwise wasted vote. An assembly thus chosen would contain the *élite* of the nation” (Ibid., 362).

Section 4: Pledges and Legislative Commissions

Perhaps the most instructive example for our purposes is Mill’s treatment of the question of “pledges,” that is, the issue of whether or not “electors” or voters should seek

to obtain, from candidates for representative office, promises to decide political matters a certain way.⁵⁷ Mill is against this very common practice. Mill's discussion in *Representative Government* repeats views expressed on the same subject three decades earlier in a pair of articles for the *Examiner*. In the second of those earlier articles, he argues that voters "ought to choose somebody whose opinion, if sincere, is more likely to be right than their own" rather than someone who merely agrees with their own current opinions and pledges to implement them in policy (CW XXIII, 500). Rather than demand adherence to pre-established pledges, electors should cede decision-making duties to those "men whom the people themselves had selected for their wisdom and good affections" (Ibid., 502). The argument against pledges – as an aspect of the organizational question – proceeds explicitly on expertise grounds:

Now, all we contend for, all we have ever contended for, is, that the people ought to have the benefit of having their affairs managed by the wise, rather than by those who are otherwise. We will join with any one who pleases in deploring that the wise are not more wise, and shall be happy to unite with all the world in making both it and ourselves as wise as our faculties and opportunities will permit. Still, we return to our original position; there may be a wiser government in the moon, perhaps, than the government of the wisest persons that can be had, but how, in the name of reason, is it to be got at? Shall we mend the matter by setting a less wisdom to dictate to a greater? (Ibid., 497)

Because Mill thinks a positive answer to that last question would be absurd, he rejects exacting pledges. In a passage from *Representative Government*, he again emphasizes the problem with "setting a less wisdom to dictate to a greater," and argues that when a representative, elected for his wisdom, is in disagreement with his constituents, "his opinion will be the oftenest right of the two. It follows, that the electors will not do

⁵⁷See his discussion of "pledges" in Chapter XII of *Representative Government*, in CW XIX, and in two articles he wrote for the *Examiner*, at CW XXIII. There is a great deal of overlap in these discussions.

wisely, if they insist on absolute conformity to their opinions, as the condition of his retaining his seat” (CW XIX, 506).

The case of pledges is so instructive because it is a clear example of Mill’s jurisdictional thinking in expertise terms. To exact pledges would be to determine the practical justificatory question prior to the jurisdictional question. We ought as a practical matter first settle the question of “who should decide” on the basis of expertise (and identity of interest) and then let that person proceed to tally the consequences and make a decision. This jurisdictional thinking infects all of Mill’s organizational efforts.

To take just one more example, Mill writes in his *Autobiography* of the

...need of a Legislative Commission, as a permanent part of the constitution of a free country; consisting of a small number of highly trained political minds, on whom, when Parliament has determined that a law shall be made, the task of making it should be devolved: Parliament retaining the power of passing or rejecting the bill when drawn up, but not of altering it otherwise than by sending proposed amendments to be dealt with by the Commission. The question here raised respecting the most important of all public functions, that of legislation, is a particular case of the great problem of modern political organization, stated, I believe, for the first time in its full extent by Bentham, though in my opinion not always satisfactorily resolved by him; the combination of complete popular control over public affairs, with the greatest attainable perfection of skilled agency. (CW I, 265)

The idea of legislative commissions is an important feature of Mill’s political designs.

Representatives elected by the people are not policy experts so much as individuals possessing superior political wisdom and focus on the general good. Their legislative role is to evaluate the policy prescriptions of experts in various fields, appointed to legislative commissions, in terms of their success in meeting the interests of society. In Chapter V of *Representative Government*, “Of the Proper Function of Representative Bodies,” Mill addresses the question of the role of representatives in some detail:

...while it is essential to representative government that the practical supremacy in the state should reside in the representatives of the people, it is an open question what actual functions, what precise part in the machinery of government, shall be directly and personally discharged by the representative body. Great varieties in this respect are compatible with the essence of representative government, provided the functions are such as secure to the representative body the control of everything in the last resort.

There is a radical distinction between controlling the business of government, and actually doing it... It is one question, therefore, what a popular assembly should control, another what it should itself do. It should, as we have already seen, control all the operations of government. But in order to determine through what channel this general control may most expediently be exercised, and what portion of the business of government the representative assembly should hold in its own hands, it is necessary to consider what kinds of business a numerous body is competent to perform properly. That alone which it can do well, it ought to take personally upon itself. With regard to the rest, its proper province is not to do it, but to take means for having it well done by others.” (CW XIX, 423-424)

The “proper” function of representative bodies, in keeping with what we have seen already, is a question of competence, where that is largely a function of expertise. For reasons seen earlier, Mill thinks “ultimate control” or what he calls here “practical supremacy” must rest with the general population. But that practical supremacy is mediated through representatives selected for the superior wisdom. It is a natural further step to consider whether the representatives’ own decision-making authority should be limited by appeal to similar considerations. Mill argues that the “proper province” – which as we saw limits the scope of what it can rightfully do – is limited to what it is most competent to do. This has two aspects, concerning administration and legislation. On the administrative side, representatives should limit their activities to acting collectively as a kind of ombudsman over those who actually administer the government, with the power to appoint administrators, and to impeach those who have clearly failed in their duties.

Mill argues that large bodies are not well-suited to administration, but he makes a further point more relevant to our purposes: representatives are, typically, dilettantes when it comes to many matters of government, but “[e]very branch of public administration is a skilled business...”:

The interests dependent on the acts done by a public department, the consequences liable to follow from any particular mode of conducting it, require for weighing and estimating them a kind of knowledge, and of specially exercised judgment, almost as rarely found in those not bred to it, as the capacity to reform the law in those who have not professionally studied it. All these difficulties are sure to be ignored by a representative assembly which attempts to decide on special acts of administration. At its best, it is inexperience sitting in judgment on experience, ignorance on knowledge: ignorance which never suspecting the existence of what it does not know, is equally careless and supercilious, making light of, if not resenting, all pretensions to have a judgment better worth attending to than its own. (CW XIX, 425-426)

In consequence of this and other considerations, Mill concludes: “The proper duty of a representative government in regard to matters of administration, is not to decide them by its own vote, but to take care that the persons who have to decide them shall be the proper persons” (Ibid., 426). And this jurisdictional allocation is done largely on the basis of expertise, checked by anti-corruption considerations of identity of interest.

On the legislative side, as we have already seen, Mill employs similar reasoning to conclude that the role of the representative body is to evaluate the policy prescriptions of legislative commissions by appeal to the general good and to have the power to enact them. A relatively small “Commission of Legislation,” – with commissioners appointed to 5 year terms – would introduce an “element of intelligence” in the writing of the laws:

Any government fit for a high state of civilization, would have as one of its fundamental elements a small body, not exceeding in number the members of a Cabinet, who should act as a Commission of Legislation, having for its appointed office to make the laws... Parliament should have no power to alter the measure, but solely to pass or reject it; or, if partially disapproved of, remit it to the Commission for reconsideration. (Ibid., 430)

While democracy is justified largely on progressive and identity of interest grounds, *representative* democracy is justified by a combination of identity of interest and expertise grounds. Representatives selected for their superior wisdom will presumably provide a better check than the democratic populace itself, and would also more ably carry out the tasks of evaluating legislation and the performance of administrative officials. And within a representative democracy, within a system engineered to secure the possibility of progress and the identity of interest between rulers and ruled, Mill then pushes to maximize the influence of expertise. Thus, although representatives are the voice of the ultimate controlling authority in society, they should not actually *govern*:

Instead of the function of governing, for which it is radically unfit, the proper office of a representative assembly is to watch and control the government: to throw the light of publicity on its acts; to compel a full exposition and justification of all of them which any one considers questionable; to censure them if found condemnable, and, if the men who compose the government abuse their trust, or fulfil it in a manner which conflicts with the deliberate sense of the nation, to expel them from office, and either expressly or virtually appoint their successors. (CW XIX, 432)

This design, Mill argues, best satisfies the requirements of the progressive and organizational aims of government:

Nothing but the restriction of the function of representative bodies within these rational limits, will enable the benefits of popular control to be enjoyed in conjunction with the no less important requisites (growing ever more important as human affairs increase in scale and in complexity) of skilled legislation and administration. There are no means of combining these benefits, except by separating the functions which guarantee the one from those which essentially require the other; by disjoining the office of control and criticism from the actual conduct of affairs, and devolving the former on the representatives of the Many, while securing for the latter, under strict responsibility to the nation, the acquired knowledge and practised intelligence of a specially trained and experienced Few.” (Ibid., 433-434)

Section 5: Jurisdiction and Justification

What we find in all of these examples, concerned with the “proper function” of various parties, is Mill’s attention to the distinction introduced earlier between justification and jurisdiction. To see this distinction at work, it is worth introducing another text, Bk. V, Ch. 11 of Mill’s *Principles of Political Economy*, “Of the Grounds and Limits of the *Laisser-Faire* or Non-Interference Principle.” Mill begins that chapter by considering “the province of government: the question, to what objects governmental intervention in the affairs of society may or should extend” (CW III, 936). He then distinguishes between “authoritative interference of government” – which involves restrictions and prescriptions that involve “controlling the free agency of individuals” – and “nonauthoritative” interference – which involves only the provision of certain means or advice which individuals may rightfully ignore. He offers several examples of this difference:

...it is one thing to maintain a Church Establishment, and another to refuse toleration to other religions, or to persons professing no religion. It is one thing to provide schools or colleges, and another to require that no person shall act as an instructor of youth without a government licence. There might be a national bank, or a government manufactory, without any monopoly against private banks and manufactories. There might be a post-office, without penalties against the conveyance of letters by other means. There may be a corps of government engineers for civil purposes, while the profession of a civil engineer is free to be adopted by every one. There may be public hospitals, without any restriction upon private medical or surgical practice. (Ibid., 937)

Authoritative interference, which seems also to be Mill’s primary concern in *On Liberty*, “has a much more limited sphere of legitimate action than the other” (Ibid., 937). He argues that “there is a part of life of every person who has come to years of discretion, within which the individuality of that person ought to reign uncontrolled either by any other individual or by the public collectively... sacred from authoritative intrusion”

(Ibid., 938). The question is “where the limit should be placed.” And his answer, again anticipating *On Liberty*, is that the “province of human life” that is beyond the province of legitimate authoritative interference “ought to include all that part which concerns only the life, whether inward or outward, of the individual” (Ibid., 938). The only clue to the placing of this limit is Mill’s comment about “years of discretion,” and in the next chapter I argue that the rationale for this limit is the difference in expertise, between government and competent reasoning individuals, concerning how best to pursue one’s own good. But the present point is that Mill here expresses a concern with what I am calling the jurisdictional question. It is an organizational question concerned immediately with *who should decide* certain matters, and not *directly* with what course of action would, in fact, achieve the best actual consequences. It is concerned, as I have suggested, with what it would be rightful for government to do, and not with what it would be right for government to do within its rightful sphere.

In his *Principles*, Mill then turns to what I am calling justificatory questions, i.e. having addressed the division of decisional authority, he concerns himself with the question of when the interference of government, within its rightful sphere, would or would not conduce to good consequences. As we saw, governmental interference can be wrong in two ways, on Mill’s view, by transcending its rightful sphere, or by interfering rightfully but in a way that fails to conduce to the good. In the justificatory frame, Mill argues that “[e]ven in those portions of conduct which do affect the interest of others, the onus of making out a case always lies on the defenders of legal prohibitions” (CW III, 938). The rest of the chapter is dedicated to the question of when a general principle of non-interference should allow of exceptions. The reason this principle allows of

exceptions is its justificatory nature. Mill, the consequentialist, consistently rejects the notion of “absolute” or exceptionless political precepts, short of the principle of utility itself.

What underlies Mill’s concern with expertise as a basis of jurisdiction, is his rational commitment, in the pursuit of any end, to acting in accordance with our best beliefs about the balance of costs and benefits (and their probabilities) with regard to the achievement of that end. These best beliefs, he argues, are the beliefs possessed by experts. And where it would seem to be the case that one party is more expert than all other parties concerning the costs and benefits involved in some matter, then it would be irrational not to act in accordance with that party’s decision. In the examples above concerning Mill’s organizational thought, he seems to worry repeatedly that to act in accordance with a lesser expert would be “unwise” or would involve ““reversing all the rules of rational conduct”. In “Thoughts of Parliamentary Reform,” he writes: “There is no one who, in any matter which concerns himself, would not rather have his affairs managed by a person of greater knowledge and intelligence, than by one of less” (CW XIX, 324). But once it has been settled *who* should decide, it is then a further important question just what sorts of actions or policies would in fact produce the best actual consequences. In his *Principles*, Mill argues for an active government role in a host of social matters, but also that in many cases the best actual consequences would result from leaving individuals to decide matters for and amongst themselves.

In his *System of Logic* (1843), Mill argues that the phenomena of social life are so complicated that politics must be treated as an art and not a science: “in so complicated a class of subjects, it is impossible to lay down practical maxims of universal application”

(CW VIII, 877). But there is sufficient information from past cases to think the informed guidance of practical affairs possible. And this, Mill recognizes, involves judgment. But whose judgment? As the organizational examples suggest, Mill thinks we can do no better than to follow what those most likely to have a handle on the relevant costs and benefits concerning a certain class of subjects, i.e. experts, recommend.

Consider Mill's discussion of the evolving nature of "secondary principles" in pursuit of happiness. There is nothing obvious about how to achieve the standard set by the principle of utility. In an essay on Bentham (1838), he describes happiness as "a complex and indefinite" end (CW X, 110). In his *System of Logic* (1843), Mill writes that the "speculative science" of how to achieve that "complex and indefinite" end – the science of secondary rules – is itself imperfect and evolving (CW VIII, 946). And he reminds us in *Utilitarianism* that secondary principles remain (and perhaps *must* remain, as elements of an "art") provisional:

The corollaries from the principle of utility, like the precepts of every practical art, admit of indefinite improvement, and, in a progressive state of the human mind, their improvement is perpetually going on. (CW X, 224)

In response to this uncertainty, Mill argues that the way to move forward practically is first to identify those parties most likely to understand the goods and harms involved in some domain.

As a final example, we might note that this is in keeping with Mill's antipathy, following Bentham, to restrictions on the revision of constitutional codes by a well-constructed government. As we saw in Chapter 1, Bentham, in his writing on constitutional codes, endorses the "omnicompetence" of legislatures, that is, their right to consider and interfere with any social or legal matter before them, unconstrained by

constitutional dogma: “Why render the legislature omniscient? Because it will the better enable it to give effect to the will of the supreme constitutive, and advancement to the interest and security of the members of the state.”⁵⁸ Part of the issue here is that it would be irrational to put restrictions on “upon remedy and improvement.”⁵⁹ because the evolving judgment of a well-constituted elected body represents our best beliefs about how to achieve the general good.

Mill’s organizational aim is fundamentally about jurisdiction: to put into decision-making positions the personnel that is mostly like to have a correct grasp of the costs and benefits of acting or deciding one way or another in some domain (so long, of course, that there are appropriate checks on their power to ensure a focus on the general good). It is then up to those experts to answer the justificatory question of how best to achieve the good by running a tally of the all the relevant goods and harms associated with some domain.

This feature of Mill’s political designs, and its constancy in his political writings, has – I believe – not been appreciated. But it is absolutely crucial to understanding the structure of his political thinking. In the next chapter, I apply this distinction to Mill’s *On Liberty*, and argue that his famous liberty (or harm) principle – within a broader progressive argument in that work – should be understood only as a jurisdictional principle justified by considerations of relative expertise. In light of the foregoing examples of political design – many of which appear in works published around the same

⁵⁸*Constitutional Code*, in Jeremy Bentham, *The Works of Jeremy Bentham*, vol. IX, ed. Bowring (Edinburgh: Tait, 1843), p. 119.

⁵⁹*Ibid.* For Mill’s endorsement of Bentham’s views on constitutional codes, see “Bentham,” in CW X, 104.

time as *On Liberty* – this will now, I hope, appear as a natural reading of Mill's project in that essay.

Chapter Four

Jurisdiction, Justification, and Mill's Anti-paternalism

Section 1: Introduction

In the previous chapter, I attempted to demonstrate the importance of a distinction between jurisdictional and justificatory questions in Mill's political designs, and to argue that his organizational thought is dictated only by the jurisdictional question, which has two elements, i.e. expertise and identity of interest. We then explored Mill's repeated appeals to expertise or wisdom across a set of his organizational designs.

In the present chapter, we turn our attention to *On Liberty*. This work combines many of the elements that we have surveyed in the preceding chapters. In Chapter 2, I suggested that the core argument of *On Liberty* as a whole is the progressive argument, a key element of which concerns intellectual development. In line with my discussion of Chapter 3, I will argue that the liberty principle is – within the progressive context presented in that work – to be taken narrowly as a jurisdictional principle based on expertise considerations. This chapter focuses on a central element of the difficulty of interpreting the liberty principle in an effort to suggest that the limits on rightful social and governmental interference expressed by the liberty principle are justified, on Mill's picture, only by appeal to expertise-driven jurisdictional considerations.⁶⁰

⁶⁰In *On Liberty*, Mill sets aside the question of identity of interest. The discussion takes place entirely within a democratic context that supplies the crucial check on power.

In *On Liberty*, Mill categorically rules out paternalistic social interference with any competent, reasoning adult: “The only part of the conduct of any one, for which he is amenable to society, is that which concerns others. *In the part which merely concerns himself, his independence is, of right, absolute*” (CW XVIII, 224; emphasis added). Yet, throughout his ethical writings Mill suggests that his consequentialism is incompatible with absolute or exceptionless rules. In an 1837 essay, he writes, “if we once admit as the supreme test of right and wrong in an act, the balance of all its consequences, by what approach to omniscience can we pretend to predict that such balance must always be on one side, in every conceivable diversity of cases?”⁶¹ I will call the problem of reconciling Mill’s consequentialism with his exceptionless prohibition against paternalism for competent, reasoning individuals the “absolutism problem.”

In this chapter, I want to draw on the resources of the earlier three chapters to offer a fresh reading of *On Liberty* as governed by his attention both to intellectual progress and to the allocation of jurisdiction largely on the basis of expertise. These resources should allow us to see why Mill introduced the absolute principle he did, and by doing so help to make a more coherent whole of that famous essay.

The absolutism problem has led commentators to argue that *On Liberty* (the main source for anti-paternalism) and *Utilitarianism* (the canonical statement of consequentialism) are simply incompatible, or that Mill changed his mind between writing them (though they were written nearly contemporaneously), or that he is careless in one place or the other. There is a widespread belief that his moral and political work

⁶¹CW XIX, 638 (“Taylor’s Statesman,” 1837). This review of Henry Taylor’s *The Statesman* was originally published in the *London & Westminster Review*, and appears to have been co-authored with George Grote. Mill repudiates absolutes throughout his writings, e.g., in the last paragraph of Chapter II of *Utilitarianism*: “rules of conduct cannot be so framed as to require no exceptions...” (CW X, 225).

exhibits a “lack of logical cogency.”⁶² I will argue that Mill’s absolute anti-paternalism and his consequentialism are perfectly consistent.

My argument turns on the claim that, in defending his anti-paternalism, Mill deploys the crucial distinction between justificatory and jurisdictional questions explored in the previous chapter. *Utilitarianism* articulates Mill’s standard of what it is for a decision to be morally justified: roughly, that it promotes the general happiness. The question of “what would be the right thing to do” – the justificatory question – is answered by running a tally of all the relevant goods and harms in light of some particular conception of the good. But Mill is sensitive to the difficulties of making a complete and certain tally of actual consequences. He argues that we must therefore first settle the more tractable practical matter of “who should decide” – the jurisdictional question⁶³ – which is answered by appeal to considerations of which party is most likely to know how to promote happiness in some domain. Because it would be irrational not to act in accordance with our best beliefs, Mill argues that we ought to grant decisional authority to whichever party is most expert or is most likely to be knowledgeable with regard to the matter at hand.⁶⁴ And this is settled on the basis of education, familiarity with the subject, and other factors commonly associated with expertise or likely knowledge of some matter.

⁶²Isaiah Berlin, “John Stuart Mill and the Ends of Life,” in John Gray and G.W. Smith, eds., *J.S. Mill on Liberty: In Focus* (London and New York: Routledge, 1991), p. 132.

⁶³By jurisdiction, I do not mean to invoke a purely legalistic idea. In the context of *On Liberty* Mill uses “jurisdiction” just to indicate decisional prerogative or the sphere in which some party – but not others – has decisional “latitude”.

⁶⁴This identification of our best available beliefs with whatever the experts decide assumes that the experts will not try to mislead us, and so Mill also argues (esp. in *Representative Government*) for certain traits of character – especially sincerity or honesty – required for the effective expression of expertise. Again, in *On Liberty*, he sets that worry aside because it occurs within the context of a discussion of democratic government.

Once jurisdiction is settled, it is then up to those relative experts in each sphere to address the justificatory question, that is, to run the tally of goods and harms as best they can, in light of their own best understanding of the relevant matters, to decide what act or policy is justified. While experts might be mistaken – their decisions may be morally wrong – practical rationality dictates that we let them decide. And what we find, when we turn to Mill’s texts, is that they contain a complex set of social and political arrangements structured by an effort to give governmental, social, and individual power at every level to those with the relevant expertise.

The absolutism problem is resolved, on this view, by recognizing that Mill’s absolute restriction on paternalism is justified at the level of jurisdictional evaluation: the competent, reasoning individual, he argues, is *always* the relative expert with regard to his own good. In *On Liberty*, Mill argues that with regard to the individual’s own good, “the most ordinary man or woman has means of knowledge immeasurably surpassing those that can be possessed by any one else” (CW XVIII, 277). Once the individual is determined to be the best available judge of his own good, it would be practically irrational, even when he is in fact wrong, to substitute the less expert decision of society for his more expert decision. Because this will be true in each and every case (on Mill’s view), the liberty principle *qua* expertise principle yields an absolute restriction on paternalistic social interference.

One might think that the ready consequentialist reply to the jurisdictional question – who should decide? – is that decisional authority or jurisdiction should be given to the person whose decisions in the circumstances will have the best actual consequences. The jurisdictional question on this view is just a species of the justificatory question. But *that*

determination is as subject to partial and incomplete understandings as any other tally. What is more, if we admit what Mill noted earlier, that answering the justificatory question does not result in absolutes, then this sort of determination would not yield an absolute prohibition on paternalism, and so it does not fit with Mill's explicit unconditional assignment of decisional authority to individuals in matters concerning their own good.

We may not agree with Mill that the individual is always more expert with regard to his own good than social authority. But to appreciate the importance of Mill's attention to expertise, even if it fails to justify an absolute anti-paternalism, is to appreciate how Mill's moral and political philosophy hangs together. I argue that the justification-jurisdiction distinction explains not only Mill's view of the individual's sovereignty with regard to his own good; it also reveals the compatibility of *On Liberty* (1859), *Utilitarianism* (1861), and *Considerations on Representative Government* (1861). In particular, as I hope to show, *Representative Government* is systematically concerned with it, and the structure of *On Liberty* cannot be understood properly without recourse to it.

Before entering into my positive account in more detail, I first want to consider briefly the standard interpretation of Mill's argument for the famous liberty principle and his anti-paternalism in *On Liberty*, according to which they are justified by the great intrinsic value that he affords "individuality" – the exercise and development of one's own rational faculties in directing the path of one's life – as a component of the human good.

Section 2: Anti-paternalism, the Liberty Principle, and Individuality

Mill's anti-paternalism follows from his liberty principle, which restricts legitimate social interference to cases in which considerations of social harm are present. Those considerations may not be sufficient to justify interference, but they are necessary for society to have any say-so whatsoever. The liberty principle states:

...that the sole end for which mankind are warranted, individually or collectively in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. (Ibid., 223)

The only kind of reason that government or social authority may appeal to in order to justify social interference with individual liberty, then, is “harm to others.” Where “harm to others” considerations are not present, social authority has no jurisdiction or decision-making authority whatsoever over the matter.⁶⁵ Over his own good, therefore, the individual's “independence... is absolute”.

It is important to note a key qualification on the application of the liberty principle, the appreciation of which is required to understand the principle itself. In the paragraph that immediately follows its introduction, we find that anti-paternalism is limited to particular circumstances, namely those of a “civilized” country in which individuals are “in the maturity of their faculties” (Ibid, 224). Such individuals are also described as being “capable of rectifying [their] mistakes by discussion and experience,” as having the “capacity of being guided to their own improvement by conviction or persuasion,” as persons “of full age, and the ordinary amount of understanding,” as

⁶⁵The phrase “harm to others” is misleading in an important respect: soon after introducing the liberty principle, Mill tells us that individuals may be interfered with in order to compel behavior that is *beneficial* to others or to society, as in providing evidence in court or in trying to save another's life (I.11). Mill is concerned with the calculation of beneficial or harmful consequences for others that result from a person's behavior.

“human creature[s] of ripe years,” and, in a related passage from *Principles of Political Economy* (1848), as “those who are capable of acting in their own behalf.”⁶⁶

The liberty principle does not apply to “children,” to “[t]hose who are still in a state to require being taken care of by others,” to those in “backward states of society” or “barbarians” (CW XVIII, 224), or to those not in “full use of the reflecting faculty” (Ibid., 294). In his *Principles*, Mill suggests that different considerations would also apply to “a lunatic, or [someone] fallen into imbecility” (CW III, 803). Because it allows exceptions, the common element to which seems to be the need for a basic rational capacity or reason-responsiveness, Mill’s anti-paternalism is now called “soft” paternalism. Soft as it may be, it nonetheless categorically rules out interference on the basis of a minimally rational individual’s own good. One task, as we go forward, is to explain these exceptions to, and conditions on, the application of the liberty principle.

The standard justification of restricting social interference according to the liberty principle is that by providing a sphere of personal liberty, individuality – which Mill in *On Liberty* calls “one of the principal ingredients of human happiness, and quite the chief ingredient of individual and social progress” (CW XVIII, 261) – may thereby flourish. The claim that individuality is central to Mill’s argument is supported most strikingly by his assertion, as we saw earlier, in his *Autobiography* (1873) that *On Liberty* is “a kind of philosophic text-book of a single truth,” namely, “...the importance, to man and society, of a large variety in types of character, and of giving full freedom to human nature to expand itself in innumerable and conflicting directions” (CW I, 259).

As I remarked in Chapter 2, Mill’s “single truth” in fact involves two separate arguments, which ultimately feature in different ways in the text. The former concerns

⁶⁶CW XVIII, 231, 224, 276, 277; CW III, 803.

individuality as an important, dominant, or perhaps even essential component of the human good, having “intrinsic worth” (III.2). On this view, individuality or self-direction is to be treated as itself part of Mill’s conception of the human good. I have called this *the intrinsic argument for individuality*. The latter argument concerns, broadly speaking, individuality as an engine of individual and social progress. It concerns the instrumental value, to individuals and society, of a diversity of opinion and “experiments of living.” In general, the conditions of “discussion and experience” required for individual and social progress are only available if there is some scope for individuality. I have called this *the instrumental argument for individuality*.

In the instrumental argument, Mill argues that allowing for diversity increases the number of “possible independent centres of improvement” (CW XVIII, 272). Social progress through individual innovation and development depends on the maintenance of certain relatively liberal social conditions. As we saw in Chapter 2, the instrumental argument for individuality captures roughly what Mill calls his “progressive principle,” which he clearly suggests – even in *On Liberty* – is more fundamental to his social and political views than the liberty principle itself:

The spirit of improvement is not always a spirit of liberty, for it may aim at forcing improvements on an unwilling people: and the spirit of liberty, in so far as it resists such attempts, may ally itself locally and temporarily with the opponents of improvement: but the only unfailing and permanent source of improvement is liberty, since by it there are as many possible independent centres of improvement as there are individuals. The progressive principle, however, in either shape, whether as the love of liberty or of improvement, is antagonistic to the sway of Custom, involving at least emancipation from that yoke; and the contest between the two constitutes the chief interest of the history of mankind. (CW XVIII, 272)

This priority is corroborated by his insistence in *Representative Government* – published just two years after *On Liberty* – that progress is the principal aim of government.

Maintaining the diversity of opinion and modes of life that make possible progress in a “civilized” society like ours is the constraining practical end-in-view of political decision-making. Whatever else we decide to do, individually or collectively, we must not undermine those progressive conditions.

I think the instrumental argument is the core argument of *On Liberty*, but I also think that it cannot explain the absolute restriction on paternalism, simply because it is unlikely that the protection and development of individuality and diversity requires an absolute restriction on paternalism. On the basis of individuality considerations, we should wonder why the argument adduced in *On Liberty* is not rather more like the argument in *Principles* for a general and defeasible “non-interference principle.”⁶⁷ That principle prescribes that in every case of possible social interference it must first be seen whether such interference would be more beneficial than leaving things to the “voluntary” actions of individuals. The importance of maintaining the progressive conditions of “discussion and experience” would surely weigh heavily in these calculations, but the non-interference principle does not specify in any categorical terms that interference is ruled out on certain grounds. Even if individuality must have a relatively large field of play to develop, we might doubt that individuality requires an absolute restriction on paternalism.

According to a very common reading, it is argued that the great *intrinsic* value of individuality is at the very heart of *On Liberty*. In Chapter III (“Of Individuality, As One of the Elements of Well-Being”), Mill develops, among other things, an account of individuality as a central component of happiness or the human good. The person who

⁶⁷Though even there Mill hints at the liberty principle as formulated in *On Liberty*. See *Principles of Political Economy*, Book V, Chapter 11 (CW III, 936f).

exhibits individuality “employs all his faculties” of observation, reasoning, judgment, discrimination, and self-control (III.4). Employing these faculties, he argues, is not merely a useful means for the achievement of one’s ends, but is a “principal” part of the human good itself: “It really is of importance, not only what men do, but also what manner of men they are that do it” (III.4). Those who emphasize Mill’s intrinsic argument for individuality thus argue, with John Skorupski, “that the case for the Liberty Principle derives from an account of human well-being.”⁶⁸

Section 3: Individuality, Rule-Consequentialism, and the Absolutism Problem

How might a concern for the intrinsic value of individuality justify an absolute or exceptionless restriction on paternalistic social interference? I want to consider briefly three approaches to explaining this connection. First, it is often argued that the absolute restriction is justified on the grounds that the very great value of individuality generates a right to the personal liberty necessary for it. Alan Ryan is an example:

The utility that Mill has in mind... embraces components that connect... to a right to be left alone, except when one is a threat to other people or violates their rights. One of these components is autonomy, the power of self-creation and self-direction that Mill made so much of in other writings. If its exercise is indispensable to utility so conceived, we have something *close to an absolute principle*. (emphasis added)⁶⁹

Ryan argues that because individuality is “indispensable” to the individual good, the personal liberty necessary for its development has the status of a right (“the right to be

⁶⁸John Skorupski, *Why Read Mill Today?* (London and New York: Routledge, 2006), p. 52.

⁶⁹Alan Ryan, ed., *Mill: Texts, Commentaries* (New York and London: Norton, 1997), p. xxi. This approach is common. For example, Skorupski offers another formulation of this view: “Mill can certainly argue that personal independence is so essential to human well-being, both in itself and for its good consequences, that it should be respected as a right. Which of course is what he does. Personal independence, moral freedom and individual spontaneity are the values that underpin *On Liberty*” (Skorupski, *Why Read Mill Today?*, 64).

left alone”); society must not interfere with it except to protect others’ rights. However, given Mill’s theory of rights, Ryan retreats to “something *close* to an absolute principle.” For Mill, rights concern only certain high-voltage goods that merit special protection by society. But they do not ground or correspond to unqualified rules or obligations. Consider Mill’s hedge in Chapter V of *Utilitarianism* even with regard to those rules and rights that are matters of justice:

Justice is a name for certain classes of moral rules, which concern the essentials of human well-being more nearly, and are therefore of *more* absolute obligation, than any other rules for the guidance of life; and the notion which we have found to be of the essence of the idea of justice, that of a right residing in an individual, implies and testifies to this *more* binding obligation. (CW X, 255; emphases added)

As Ryan notes, rights themselves may conflict and Mill here leaves room for the thought that the good (or “human well-being”) trumps any right. But, then, to do justice to Mill’s insistence that social authority *never* has the standing to dictate terms to the individual with regard to his own good, we require an explanation that is stronger than the appeal to what Mill says about rights. Individuality, even if a vital component of the human good, is to be weighed against other considerations (concerning my own good). Presumably, there will be trade-offs on this model.

Part of the strategic problem here is the attempt to generate the absolute restriction at the level of justification, not jurisdiction, by building into the consequentialist calculation some particular concern or value. We also saw this in our brief discussion of the instrumental argument. At the level of justification – of applying “the supreme test of right and wrong in an act, the balance of all its consequences” – Mill argues against absolutes. In the justificatory context, there appear to be only two ways to generate an absolute by appeal to individuality: either one must give individuality such

significance that it outweighs all other values in every relevant calculation, or one must try to defend the absolute restriction in rule-consequentialist terms.

A second approach thus attempts to remedy the problems of the first by affording individuality not just great value, but value infinitely surpassing other important considerations. Jonathan Riley argues that, for Mill, “a person’s liberty in self-regarding matters is *infinitely more valuable* than any satisfaction the rest of us might take at suppression of his conduct.”⁷⁰ Riley is right to think that, in a certain limited calculation, the former value is so much greater than the latter as to tilt the balance of consequences in each and every case. Unfortunately, the relevant calculation is broader than Riley here admits. It concerns whether paternalism would in some cases be more productive of the good overall, taking into account not only my interest in being self-directing and others’ offense at my decision, but also whether my decision is in fact the best one for me. And it is implausible to suggest that my interest in being self-directing will, in fact, outweigh *all* other considerations for me in each and every case.

A third approach attempts to avoid the pitfalls of the first two by placing the value of individuality within an institutional framework, in which the operative question concerns not the relative value of individuality in each case, but whether an absolute restriction on paternalistic interference would be among the set of rules or institutions that most effectively promotes the good over the long-term. This approach depends not on the infinitely greater weight of individuality’s value, but on the rule-ish nature of the justificatory project. On this view, Mill takes up the legislator’s perspective, and calculates that, given the practical constraints on formulating a good rule for the

⁷⁰Jonathan Riley, *Mill on Liberty* (New York: Routledge, 1998), p. 159 (emphasis added). Riley’s approach is not without textual support. At the least, it echoes Mill’s claim that there is a lack of “parity” between a person’s concern for his own opinion and those who might be offended by it (see CW XVIII, 283).

governance of society, the liberty principle (containing its absolute restriction on paternalism) will work better than competing principles to promote the good over the general run of things, and to allow paternalistic exceptions would undermine the greater good achieved by having that principle in place. As David Lyons argues:

Mill recognizes that this restriction does not follow from his general happiness principle, which could conceivably approve of, say, interference meant to benefit those whose freedom was to be limited. But he believes that we are bound to be misled by appearances, prejudices, or self-deception, and that the risks far outweigh the possible gains, so that we are better off restricting social intervention very severely... It is not that we are most likely to do what we ought, in each particular case, if we follow such a rule generally, but rather that our *making it a matter of principle* to limit social interference in this way is an essential means to the end of happiness.⁷¹

According to Lyons, a utilitarian legislator will justify the liberty principle, including its absolute restriction, on the basis of a general-run calculation. To grant a degree of discretion to officials to interfere paternalistically when they regard it as appropriate or necessary, would be to introduce a host of problems (notably “prejudice” and “self-deception” in the judges) that would threaten more harm than good overall, even if in some particular cases discretion would lead to the most beneficial effects. If this is right, then it appears one can generate or justify an absolute restriction on paternalistic interference within an institutional, rule-consequentialist framework.

But in later work Lyons himself develops a serious dilemma for such a view, namely, that it involves either unjustified rule-worship or the arbitrary limitation of utilitarian evaluation to the level of institutions.⁷² Imagine a legal official restricted in his

⁷¹David Lyons, “Mill’s Theory of Morality,” in *Rights, Welfare, and Mill’s Moral Theory* (New York and Oxford: Oxford University Press, 1994), p. 64 (emphasis added). Lyons’s discussion echoes Rawls’s justification of punishment in his “Two Concepts of Rules,” *The Philosophical Review* 64 (1955), 3-32.

⁷²See Lyons, “Utility and Rights,” chapter 6 in *Rights, Welfare, and Mill’s Moral Theory*.

decisions by Mill's absolute anti-paternalism, on the grounds that such a rule has been determined to be among those rules and institutions that would best promote the good. What, then, ought the official to do in a particular circumstance in which it is apparent to him that deviation from the rule would, in fact, better promote the good than adherence to the rule would? To argue that the official may not deviate from the rule is to argue that utilitarian calculation at the official's level of decision-making is in some sense "illicit," to use Lyons' term. But in what sense would it be illicit?

Lyons argues that there is nothing in utilitarianism itself that restricts such deviations, because utilitarianism itself is committed merely to *whatever* would best promote the good: "The question may be understood as follows. If a utilitarian believes that certain rules are justified on utilitarian grounds, does he *contradict* himself by supposing that direct utilitarian arguments for deviating from the rules may be entertained? I see no contradiction here..."⁷³ Rather, Lyons notes, the natural utilitarian tendency is to find a place for discretion by conscientious and well-placed agents in particular circumstances: "from the fact that a sound utilitarian argument is available for a legal rule it does not follow that utility will be maximized by adhering to the rules in each and every case. Conditions vary, and a sensitive utilitarian official will presumably be flexible".⁷⁴ A utilitarian should resist endorsing an absolute restriction on the basis of rule-consequentialist thinking. Mill seems to concur when he writes in *Utilitarianism* that because of "the complicated nature of human affairs... rules of conduct cannot be so framed as to require no exceptions" (CW X, 225).

⁷³Lyons, "Utility and Rights," p. 168.

⁷⁴Ibid., 165.

Whatever the merits of rule-consequentialism, the balance of textual evidence militates against attributing that view to Mill. Mill is sensitive to questions of institutional design, to the practical value of acting and governing according to rules, and, as a part of that, to the disutility of each and every person calculating consequences at each and every turn. The effective governance of social and political life requires rules of a sort. I cannot in the space available hope to settle this long-standing dispute about the role of rules in Mill's moral philosophy, but it is doubtful that he intends to restrict as "illicit" the utilitarian evaluation of deviations from rules in particular circumstances by those well-placed to make such evaluations. Consider this passage from the end of Chapter V of *Utilitarianism*, which is commonly regarded as the locus of the best evidence for thinking that Mill is a rule utilitarian:

...particular cases may occur in which some other social duty is so important, as to overrule any one of the general maxims of justice. Thus, to save a life, it may not only be allowable, but a duty, to steal, or take by force, the necessary food or medicine, or to kidnap, and compel to officiate, the only qualified medical practitioner. In such cases, as we do not call anything justice which is not a virtue, we usually say, not that justice must give way to some other moral principle, but that what is just in ordinary cases is, by reason of that other principle, not just in the particular case. (CW X, 259)

In the 1837 essay quoted at the opening of this chapter, he makes the relevant general point: "To admit the balance of consequences as a test of right and wrong, necessarily implies the possibility of exceptions to any derivative rule of morality which may be deduced from that test..." He continues:

What is to be done but to resort to the primary test of all right and wrong, and to make a specific calculation of the good or evil consequences, as fully and impartially as we can? The evil of departing from a well-known and salutary rule is indeed one momentous item on that side of the account; but to treat it as equal to infinity, and as necessarily superseding the measurement of any finite quantities of evil on the opposite side, appears to us to be the most fatal of all mistakes in ethical theory. (CW XIX, 639)

In this passage, as in others, Mill appears to hold that secondary rules do not have *independent* moral force in the face of an apparently beneficial deviation. But that would contradict the core claim of rule consequentialism.

The need for flexibility in certain kinds of cases *could* be built into the rationale of our rules themselves: a fairly simple or rigid rule may be justified by a complex rationale taking into account the value of discretion at various levels of decision-making. Rules of this sort might be upheld as proper rules not admitting of case-by-case evaluation. But I think Mill is something closer to an act utilitarian who holds that moral rules are at bottom rules of thumb, which may have great value as social standards but which do not make appeals to the utilitarian standard illicit in particular cases. As D.G. Brown points out, in an 1872 letter to John Venn, Mill explicitly endorses the evaluation of individual actions separate from their being sanctioned by rules that would promote the best consequences if generally accepted in society:

I agree with you that the right way of testing actions by their consequences, is to test them by the natural consequences of the particular action, and not by those which would follow if every one did the same. But, for the most part, the consideration of what would happen if every one did the same, is the only means we have of discovering the tendency of the act in the particular case. (CW XVII, 1881)⁷⁵

If Mill does not accept rule-consequentialism, however, then the absolute rule against paternalistic interference must be justified on the basis of a true-in-every-case matter of fact. But what could this be?

⁷⁵See D.G. Brown, "Mill's Act-Utilitarianism," *The Philosophical Quarterly*, Vol. 24, No. 94. (Jan., 1974), pp. 67-68.

Section 4: Expertise as a Basis of Jurisdiction

As indicated at the outset, my own view is that Mill generates the absolute restriction by distinguishing between justification and jurisdiction, and by answering the jurisdictional question on the basis of relative epistemic standing or expertise. He thus argues that it is true in each and every case that the competent, reasoning individual has epistemic standing sufficient for decisional authority over his own good.⁷⁶ This is not to suggest that the individual is always *correct* about his own good. But it is to say that the individual is always the relative expert with regard to his own good, and that it would always be practically irrational – and so not rightful, even if it turns out to be the right thing to do in terms of actual consequences – to substitute the decision of a lesser expert for that of the individual. In what follows I try to defend this interpretation, first by appeal to *On Liberty* itself, and then by appeal to the wider context of Mill's political thought, especially *Representative Government*.

My argument will rely heavily on the opening paragraphs of Chapter IV of *On Liberty* in which Mill restates his liberty principle and the rationale for it. He there also states most clearly the distinction between jurisdiction and justification:

As soon as any part of a person's conduct affects prejudicially the interests of others, society has jurisdiction over it, and the question whether the general welfare will or will not be promoted by interfering with it, becomes open to discussion. *But there is no room for entertaining any such question* when a person's conduct affects the interests of no persons besides himself, or needs not affect them unless they like (all the persons concerned being of full age, and the ordinary amount of understanding). In all such cases there should be perfect

⁷⁶This claim may strike us as implausible, e.g., as when competent, reasoning adults would like to experiment with some highly addictive narcotic. Mill's response to these cases must be that the individuals in question are not in the "full use of the reflecting faculty." This reply of course threatens to strip Mill's anti-paternalism of real substance, because it is tailored carefully to maintain the claim that those in the best position to decide ought to do so. This is, on my view, just as well. Mill's claim about the individual's sovereignty over his own good is simply an application of Mill's observations concerning expertise.

freedom, legal and social, to do the action and stand the consequences. (CW XVIII, 276; emphasis added)

Mill here argues, first, that only after society has been granted jurisdiction does the practical question of how to tally all the relevant goods and harms arise and, second, that where society does not have jurisdiction, the individual does. The distinction between jurisdiction (the assignment of decisional authority) and justification (the tallying of goods and harms) is reinforced by other passages in *On Liberty*.⁷⁷ In Chapter V, he writes: "...for such actions as are prejudicial to the interests of others, the individual is accountable, and may be subjected either to social or to legal punishment, *if society is of opinion that the one or the other is requisite for its protection*" (CW XVIII, 292; emphasis added). The italicized portion expresses the justificatory question, which arises once jurisdiction has been granted to social authority.

Mill's focus on expertise as the basis of his jurisdictional answer to the absolutism problem is suggested most clearly in the very next paragraph:

But neither one person, nor any number of persons, is warranted in saying to another human creature of ripe years, that he shall not do with his life for his own benefit what he chooses to do with it... with respect to his own feelings and circumstances, *the most ordinary man or woman has means of knowledge immeasurably surpassing those that can be possessed by any one else*. The interference of society to overrule his judgment and purposes in what only regards himself, must be grounded on general presumptions; which may be altogether wrong, and even if right, are as likely as not to be misapplied to individual cases, by persons no better acquainted with the circumstances of such cases than those are who look at them merely from without. In this department, therefore, of human affairs, Individuality has its proper field of action. (CW XVIII, 277; emphasis added)

This passage provides an expertise rationale for Mill's anti-paternalism. Mill argues that the epistemic standing of the competent, reasoning individual with regard to his own good is far greater than that of anyone else, in virtue of the individual's familiarity with

⁷⁷See CW XVIII, 262, 276, 293, and 296 for further expressions of the jurisdictional component.

the often complex particularities of “his own feelings and circumstances.” Mill then explicitly appeals to these “means of knowledge immeasurably surpassing those that can be possessed by any one else” as the basis of his claim about the “proper field of action” for the individual.

In *On Liberty*, Mill repeatedly uses cognates of “proper” to evoke the jurisdictional question about allocating decisional authority. The liberty principle is introduced in Chapter I partly to address the fact that “[t]here is... no recognized principle by which the *propriety or impropriety* of government interference is customarily tested” (Ibid., 223). His answer, that “[e]ach is the *proper* guardian of his own health, whether bodily, or mental or spiritual” (Ibid., 226), is reiterated in similar terms at the start of Chapter IV:

What, then, is the rightful limit to the sovereignty of the individual over himself? Where does the authority of society begin? How much of human life should be assigned to individuality, and how much to society?

Each will receive its proper share, if each has that which more particularly concerns it. To individuality should belong the part of life in which it is chiefly the individual that is interested; to society, the part which chiefly interests society. (Ibid., 276)

Again, our question concerns the rationale for this claim. In the passage concerning a “human creature of ripe years,” we saw that Mill makes a striking claim about an individual’s epistemic standing with regard to one’s own good, and uses it to settle the question of the propriety of paternalistic social interference. This question should be understood as an aspect of the jurisdictional question more generally. I believe the expertise rationale explains the jurisdictional allocation in the liberty principle, so that, for instance, the attention to what “more particularly concerns” each party informs an

assessment of the relative epistemic standing of those parties. Mill underlines the epistemic insight later in Chapter IV:

But the strongest of all the arguments against the interference of the public with purely personal conduct, is that when it does interfere, *the odds are that it interferes wrongly, and in the wrong place*. On questions of social morality, of duty to others, the opinion of the public, that is, of an overruling majority, though often wrong, is likely to be still oftener right; because on such questions they are only required to judge of their own interests... But the opinion of a similar majority, imposed as a law on the minority, on questions of self-regarding conduct, *is quite as likely to be wrong as right*... (CW XVIII, 283; emphasis added)

This claim – “the strongest of all the arguments” – reinforces the thought that epistemic standing is the key consideration in Mill’s anti-paternalism. When it comes to a person’s own good, he argues that the individual who meets all of the conditions mentioned before (i.e. sane, mature, not an imbecile, etc.) has greater expertise than anyone else. Together, these passages from Chapter IV suggest that for anyone to overrule the individual with regard to his own good – when the individual has a perhaps “immeasurable” epistemic advantage with regard to the particulars of his own case, and is therefore more likely to be right with regard to the question of his own good – would be irrational. As a result, anyone else stepping in to decide for the individual would be to abrogate his proper authority. And the irrationality of substituting the lesser expertise for the greater *in each and every case* makes the individual’s decisional authority over his own good absolute.

It is important to note, again, that the individual may not always be *right* with regard to his own good, but in each and every consideration of the individual’s own good, no one is more likely to be right than the individual himself. Even when the individual is wrong, jurisdiction remains his – because there is always more reason to think that the

individual is more likely to make the right decision. Mill thereby justifies an absolute rule over a specified domain for qualified individuals.

As I indicated earlier, I do not think that Mill simply folds these epistemic observations into a utilitarian calculation about how some allocation of jurisdiction would realize his own view of how to achieve the best balance of consequences. Rather, the key idea seems to be the common notion that what is practically rational in the attempt to achieve some end is to decide or act in accordance with one's best beliefs.⁷⁸ He then moves (rather quickly) from the idea that we ought to decide in accordance with our best beliefs, to the idea that we ought to decide in accordance with what experts determine.⁷⁹ But these experts are not identified by applying some particular conception of human happiness to the question of "who should decide".

In *On Liberty*, he emphasizes the role of interest or stake in the allocation of decisional authority. Thus, in the same paragraph in which he attributes to the individual "means of knowledge immeasurably surpassing" that of anyone else concerning the details of his life, he accounts for this difference by noting:

He is the person most interested in his own well-being, the interest which any other person, except in cases of strong personal attachment, can have in it, is trifling, compared with that which he himself has; the interest which society has in him individually (except as to his conduct to others) is fractional, and altogether indirect... (CW XVIII, 277)

The interest or stake of the individual in his own good gives us reason to suppose that he will have a measure of attentiveness to, and familiarity with, the details of his situation

⁷⁸Again, by employing the term "jurisdiction" I do not mean to limit my discussion to legal matters. Jurisdiction is the practical prerogative of any expert (legal, political, social, familial etc.) to decide how to proceed on some matter.

⁷⁹In *On Liberty*, he puts aside questions of dishonesty in those experts, though in *Representative Government* he mentions sincerity as a desirable (non-epistemic) quality because it contributes to experts' deciding in accordance with their best beliefs.

far exceeding that of social authority focused on merely customary cases. In *Representative Government*, Mill more thoroughly addresses the problem of content-independent identification of political experts. He there suggests a series of traits that typically indicate political expertise, including education in political matters, policy experience, having made correct predictions, having the endorsement of highly-regarded individuals, etc. But Mill doubts that there can be a rule or algorithm to determine experts. He relies on the everyday observation that – in many facets of life – we already do identify others who know more, or know better, about some matter than we do ourselves. Political success, then, depends on our willingness to show “deference to mental superiority” (CW XIX, 508).

This expertise-jurisdictional view of Mill’s argument for the liberty principle and his anti-paternalism gains support in two key ways. First, it is able to explain straightforwardly certain features of his view. Consider that, on this view, children, lunatics, and imbeciles are *not* protected by the liberty principle precisely because they often do not have greater epistemic standing than all other relevant parties, notably parents or other care-givers. And so, a child or lunatic does not have jurisdiction over his own good in the same way, or to the same extent, as a mature and sane individual. The same considerations that justify Mill’s anti-paternalism for competent, reasoning adults justify these exceptions to his anti-paternalism.

But the second key source of support for this reading concerns its relation to his other work, some of which I surveyed in earlier chapters, including his writings on the justification of foreign interventions. Let us turn now to this.

Section 5: The Liberty Principle within Mill's Political Philosophy

Without repeating the discussion of Chapter 3, I want to reinforce the conclusion that the expertise-jurisdictional answer to the absolutism problem by indicating that it folds neatly into Mill's *Representative Government*, a work written nearly contemporaneously with *On Liberty*, and which covers some of the same general issues.

As I indicated in the last chapter, Mill presents in *Representative Government* a two-fold account of good government, encompassing the aims of (1) social progress or improvement and (2) effective organization of decision-making resources. There are two key considerations that go into the organizational question: (a) expertise and (b) identity of interest between government and the public. Within what is required for progress, he proceeds to balance expertise and identity of interest considerations to further specify an organizational structure for a "civilized" society like ours. *On Liberty* shares with *Representative Government* a paramount concern with individual and social progress. Given Mill's concern with expertise, the attention paid to intellectual progress in *On Liberty* is now perhaps not surprising. If we aim for wise decision-making, then while the question "who should decide" may be determined by relative expertise, we should also work to *improve* our expertise, i.e. our epistemic standing in absolute terms.

But we might also expect to find in *On Liberty* – in keeping with his other writings – a similar focus on expertise. Recall this passage from one of his 1832 articles on pledges:

Now, all we contend for, all we have ever contended for, is, that the people ought to have the benefit of having their affairs managed by the wise, rather than by those who are otherwise. We will join with any one who pleases in deploring that the wise are not more wise, and shall be happy to unite with all the world in making both it and ourselves as wise as our faculties and opportunities will permit. Still, we return to our original position; there may be a wiser government

in the moon, perhaps, than the government of the wisest persons that can be had, but how, in the name of reason, is it to be got at? Shall we mend the matter by setting a less wisdom to dictate to a greater? (CW XXIII, 497)

Mill thinks a positive answer to that last question would be absurd. I believe Mill's liberty principle follows through on this thought with regard to the division of decision-making duties between social authority and the individual.

What I want to suggest, then, is that just as Mill raises the organizational question in *Representative Government* and pursues it primarily in terms of expertise, he also raises the organizational question in *On Liberty* and pursues it primarily in terms of expertise. Given the problematic of *On Liberty*, concerning the proper limit of social authority over the individual, the relevant organizational principle is one that allocates jurisdiction to society and the individual. And this organizational-jurisdictional principle is the liberty principle. What we find is that, just as Mill concludes in the case of pledges that it would always be unwise to exchange the judgment of the electorate for that of the representative elected on grounds of superior wisdom in relevant political matters, so would it always be unwise to exchange the judgment of society for that of the sane and mature individual with regard to the individual's own good. And this is how he arrives at his absolute restriction on paternalistic interference.

Given this, does the *intrinsic* argument for individuality still have an important role to play in *On Liberty*? I believe it does, though not in the immediate justification of the liberty principle. Principally, I believe, Mill's conception of the good comes to the fore once the jurisdictional question is settled and the justificatory question is placed again on the table. Mill's many practical examples presented in *On Liberty* and other political writings (see esp. his *Principles*, Book V, Ch, 11) represent his considered

judgment about the relative value of social interference, and the appropriate means of interference. Mill's recommendations about how to make the right tally of goods and harms – especially his advocacy of the value of individuality as a component of the human good – should not be taken lightly. It is at the level of these recommendations – at the level of the justificatory question – that a great deal of what is interesting and important in Mill's social and political thought takes place.

Section 6: Limits on Foreign Intervention

It may yet be doubted whether Mill's attention to matters of expertise – as expressed in those passages in Chapter IV of *On Liberty* – could really constituted *the* rationale of the liberty principle. It may be helpful to consider a discussion in Mill's that would seem to require him to rely on the same kind of reasoning. This is supplied with regard to the question of when, if ever, a civilized country may intervene in the domestic affairs of another civilized country.

Apart from his theoretical work on international commerce and his more prosaic work with the East India Company, John Stuart Mill's contribution to international affairs is principally divided between two subjects: colonialism (or empire) and (non-)intervention. His qualified defense of colonial policies – especially in India – has been the subject of much discussion and dismay, both in the form of external criticism and in the frustrated effort to reconcile it with Mill's overall moral and political framework. How could such an admirer of liberty and democracy advocate colonial rule under some circumstances? His essay "A Few Words on Non-Intervention" has also received attention from Michael Walzer and others concerned with the question of when (and

when not) to intervene in the affairs of other countries.⁸⁰ In both cases, however, Mill's arguments remain poorly understood. I would argue, however, that his forays into international affairs are entirely of a piece with the main thrust of his moral and political theory as it concerns domestic affairs.

In order to understand Mill's qualified defense of colonialism and his qualified support for intervention, we must bear in mind the distinction between justification and jurisdiction. Roughly, Mill argues that where states or peoples satisfy some basic requirements of decision-making, including that the decisions are made under conditions of relative freedom, those states or peoples should be understood to have jurisdiction over their own good. This consideration speaks *against* intervention in every case, except those in which a clearly discernible preference by a "civilized" people to determine its own affairs is being thwarted by some external power. On the other hand, in cases where the states or peoples fail to satisfy those basic requirements of decision-making, i.e. those in "backward states of society" or "barbarians," some external party more capable of making a correct decision on their behalf may have jurisdiction. But this allowance does not yet justify intervention or colonial rule, because there must be a further justificatory determination about whether interference would likely to conduce to the overall good.

In Mill's essay, "A Few Words on Non-Intervention," he writes:

There is much to be said for the doctrine that a nation should be willing to assist its neighbors in throwing off oppression and gaining free institutions. Much also may be said by those who maintain that one nation is incompetent to judge and act for another, and that each should be left to help itself, and seek advantage or submit to disadvantage as it can and will. (CW XXI, 114)

Mill's essay is largely an effort to balance these two considerations, the second of which makes explicit appeal to jurisdictional (i.e. expertise) considerations analogous to those

⁸⁰See Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 1977), p. 87ff.

adduced in his case for anti-paternalism. In light of this, we can fully appreciate a key passage from an 1865 letter to James Beal, in which Mill tries to state succinctly his positions on a number of issues to aid consideration of him as a possible candidate for Parliament:

Every civilised country is entitled to settle its internal affairs in its own [way], & no other country ought to interfere with its discretion, because one country, even with the best intentions, has *no chance of properly understanding* the internal affairs of another: but when this *indefeasible* liberty of an independent country has already been interfered with; when it is kept in subjection by a foreign power, either directly, or by assistance given to its native tyrants, I hold that any nation whatever may rightfully interfere to protect the country against this wrongful interference. I therefore approve the interposition of France in 1859 to free Italy from the Austrian yoke, but disapprove the intervention of the same country in 1849 to compel the Pope's subjects to take back the bad government they had cast off. It is not however a necessary consequence that because a thing might rightfully be done, it is always expedient to do it. I would not have voted for a war in behalf either of Poland or of Denmark, because on any probable view of consequences I sh^d have expected more evil than good from our doing what, nevertheless, if done would not have been, in my opinion, any violation of international duty. (CW XVI: 1033; emphasis added)

First, this passage reveals Mill's jurisdictional approach to the question of intervention in a way that is perfectly analogous to his discussion of interference in *On Liberty*: his conclusion applies only to "civilized" countries (instead of competent reasoning individual), and is based on a consideration something analogous to relative expertise (of which party may have a "chance of properly understanding the internal affairs of another"). As in *On Liberty* his presumption against intervention does not apply to all parties, but (in this case) only to countries that are "civilized," a point further elaborated in his "A Few Words on Non-Intervention".

Second, analogous to Mill's absolute anti-paternalism, Mill argues that the right of a civilized country not to be interfered with – on the basis of considerations analogous

to relative expertise – is “indefeasible”. The reasoning here is just as one would predict by extending the jurisdictional account to international affairs.

Concerning “backward” societies, the question for Mill becomes a justificatory question: what sorts of policies would in fact conduce to the improvement of that society? Much of what Mill writes on colonialism is addressed to this question, but we can now see that his qualified support for colonial rule is consistent with his defense of liberty on jurisdictional grounds. It is reasonable, on Mill’s view, to think that some foreign power, or international organization, might be better able to make justificatory determinations than the individuals of that society themselves. Hence, Mill’s qualified support for colonialism. But it should be noted that Mill’s view allows for the conclusion that, even if some foreign power has jurisdiction, the harms associated with colonial rule would always outweigh any prospective goods.

Section 7: Conclusion

In the foregoing, I have tried to reveal the nature of the liberty principle as an expression of Mill’s organizational thinking, as it appears in many of his other political writings. This interpretation forces a re-reading of key passages, but offers, I believe, a promising approach to unifying a text that otherwise appears disjointed. Consider, for example, that Chapter II of *On Liberty*, on the “liberty of thought and discussion,” is commonly presented as an *application* of the liberty principle to questions of free speech. But, this can hardly be the case. Mill famously argues for the unrestricted expression of opinion, not on jurisdictional grounds, but on the ground that the expression of opinion is never, in fact, truly harmful. I want to suggest, rather, that by keeping in mind the two

aims of progress and organization, and the epistemic elements of each (i.e. the growth of knowledge and expertise, respectively), we can begin make sense of how the liberty principle fits within the larger argument of *On Liberty*. It is an organizational principle set in certain progressive conditions, namely those of a “civilized” society. We needn’t, then, try to subsume the discussion of free speech under the liberty principle itself, but can see it as important account of those progressive conditions within which the liberty principle finds its footing.

Chapter Five

Anti-Moralism and On Liberty

Section 1: Introduction

According to the jurisdictional interpretation of Mill's liberty principle, its rationale is to allocate decisional authority between social or political authority and the individual according to whichever party is more likely to have the better epistemic grasp of the relevant goods and harms associated with implementing some decision. The only considerations capable of justifying social interference are those that bear on matters that a well-constituted social authority is best-placed to decide. These, Mill argues, are considerations having only to do with "harm to others" or societal "self-protection," or the "interests of society". Where these other-regarding considerations are relevant, social authority has jurisdiction over the matter, and may rightfully interfere with individual liberty, though it may in fact decide incorrectly.

Consider his paradigmatic discussion of free trade in *On Liberty*: "trade is a social act... and thus [a seller's] conduct, in principle, comes within the jurisdiction of society..." (CW XVIII, 293). The reason trade comes within social authority's jurisdiction is that "the restraints in question affect only that part of conduct which society is competent to restrain" – the part addressed by social or other-regarding considerations. And so, Mill writes, trade restrictions are wrong not because they are ruled out by the liberty principle, but "solely because they do not really produce the

results which it is desired to produce by them” (Ibid.). His case for free trade does not rest on the liberty principle; society can legitimately restrict trade. It rests on his justificatory calculation: given the negative consequences of trade restrictions, he argues, social authority should determine that they are not on balance the best option in that domain of concern.

On the jurisdictional interpretation of his liberty principle, Mill systematically distinguishes the jurisdictional question – who should decide? – from the justificatory question – what should the decider decide? – and presents the liberty principle as a jurisdictional principle. The key upshot of Mill’s jurisdictional thinking in the liberty principle is his anti-paternalism. Jurisdictional allocation is informed to a great extent by observations about relative expertise concerning self-regarding and other-regarding considerations. With regard to his own good the individual has, as Mill writes in *On Liberty*, “means of knowledge immeasurably surpassing those that can be possessed by any one else” (CW XVIII, 277), and so he concludes: “The only part of the conduct of any one, for which he is amenable to society, is that which concerns others. *In the part which merely concerns himself, his independence is, of right, absolute*” (Ibid., 224; emphasis added).

In this chapter, I want to consider whether and how the jurisdictional account can accommodate another position widely associated with the liberty principle: legal or social anti-moralism, the rejection of legal or social enforcement of moral wrongs that are not harm-related. As we have seen, according to the liberty principle, the only considerations that may count in social authority’s deliberations are those that concern “harm to others.” If so, the thought goes, then it must also rule out legal or social moralism by definition.

But what is the claim here? The question isn't whether moral considerations can justify social interference – as Gerald Postema points out, “harm commands the lawmaker’s attention and supplies a justification only insofar as it is *wrong*...”⁸¹ Mill himself points to this in response to William Whewell’s objection to “Bentham’s attempt to exclude morality, as such, in his legislation” (quoted by Mill, CW X, 197). He argues that Whewell’s own discussion of Bentham’s views on divorce reveals it to be an absurd charge; Bentham’s views (and Mill’s) are guided on this and other matters by considerations of utilitarian morality.⁸² The question at issue, then, is whether *non-harm-related* moral considerations can justify social interference. Mill, it seems, would have to agree with the anti-moralist that they cannot. But it is not at all clear that Mill and the anti-moralist arrive at this result in the same way.

Section 2: The Enforcement of Morality “As Such”

If moralistic interference is cashed out as social or legal interference justified on the ground that what the individual is doing conflicts with prevailing moral standards, where the individual’s violation of those standards does not involve harm to others, then Mill’s principle seems to rule it out. The liberty principle recognizes only “harm to others” considerations as legitimate reasons for legal or social interference.⁸³ In a series

⁸¹Gerald Postema, “Public Faces—Private Places: Liberalism and the Enforcement of Morality,” in Gerald Dworkin, ed., *Morality, Harm, and the Law* (Westview: Boulder, CO, 1994), p. 80.

⁸²It is striking that Mill argues, on Bentham’s behalf, that the key consideration in the marriage/divorce case, as well as in questions of personal hygiene, is the self- vs. other-regarding distinction. There is no question of ruling out morality, though there is a question of ruling out moral (and other) considerations that cannot be divided into self- and other-regarding. The question before us is on what basis Mill thinks he can rule out such considerations. (CW X, 197-198)

⁸³But note that “harm to others” is just one way Mill limits the jurisdiction of social or legal authority. In other formulations of, and references to, his liberty principle he writes of actions that “concern others” or

of statements characterizing the legal moralism debate in *Law, Liberty, and Morality*,⁸⁴ H.L.A. Hart suggests (with the liberty principle in mind) that it concerns the status of considerations of “morality as such,” i.e., absent harm to others:

1. “Is the fact that certain conduct is by common standards immoral sufficient to justify making that conduct punishable by law? Is it morally permissible to enforce morality as such?” (Hart, 4)
2. “there are good reasons... for compelling conformity to social morality and for punishing deviations from it even when these do not harm others” (Hart, 5)
3. “the criminal law should be used to punish immorality ‘as such’” (Hart, 6)
4. “the mere fact that certain rules or standards of behaviour enjoy the status of a society’s positive morality is the reason – or at least part of the reason – which justifies their enforcement by law” (Hart, 23).

“Morality as such” seems to refer to (a) positive morality – “the morality actually accepted and shared by a given social group” (Hart, 20) – (b) taken as a consideration independent of others, notably those concerning harm. The question is whether such a consideration could justify the legal (or social) enforcement of some kind of behavior.

Joel Feinberg has argued that the best way to bring out the moralist argument is by example:

The strict moralist must find actual or hypothetical examples of actions or states of affairs that are... *morally* evil as judged by “natural” objective standards, and perfectly free-floating, that is not evil simply because harmful (in the liberal’s sense), offensive, or exploitatively unfair, but *evil in any case*...⁸⁵

Common examples of free-floating evils concern consensual acts or experiences that are thought to be “depraved,” as in homosexual intercourse, incest, or watching “a really kinky live sex show.”⁸⁶ The moralist argues that the depravity of these acts makes them

which are “social” or which affect the “interests of society”. What matters in the appeal to “harm to others,” I believe, is the distinction between self- and other-regarding considerations.

⁸⁴H.L.A Hart, *Law, Liberty and Morality* (Oxford: Oxford University Press, 1963)

⁸⁵Joel Feinberg, *Harmless Wrongdoing* (Oxford: Oxford University Press, 1990), p. 26.

⁸⁶*Ibid.*, p. 27.

inherently immoral, and subject to social or legal regulation, even though it may not be possible to identify the sort of harm that figures in a typical consequentialist calculation.

But Mill does not accept that there are free-floating evils. Mill *defines* morality as concerned with duty to others⁸⁷ and pursues moral questions within a consequentialist system aimed at the optimal balance of goods and harms. He would therefore deny that there could be, properly speaking, a prevailing *moral* opinion about *anything* without some consideration of harm to others.⁸⁸ And wherever there is an opinion involving a consideration of harm to others, there is moral opinion. “Morality-absent-harm-to-others” thus invokes an empty category in Mill’s system, and so, I will argue, it cannot fairly be said that his *liberty principle* rules it out as a potential justifier of social or legal interference. It has already been ruled out by Mill on more general philosophical grounds that we will explore in section IV. The liberty principle is a principle already well-embedded within Mill’s more general philosophical scheme, as he indicates when he states in *On Liberty* that “I forgo any advantage which could be derived to my argument from the idea of abstract right, as a thing independent of utility” (CW XVIII, 224).

Mill does not conceive of moral considerations that do not refer to consequences *for some party or other*. Justificatory considerations can always be divided into those that are other-regarding and those that are self-regarding, and it is *that* distinction that animates the liberty principle. There just is no “morality as such” for Mill, and it would be a mistake to attribute to him a view – anti-moralism – the interest of which depends on the existence of free-floating evils. It is not clear, then, that the liberty principle is

⁸⁷In *On Liberty*, e.g., Mill writes that personal faults become “a subject of moral reprobation [only] when they involve a breach of duty to others...” (CW XVIII, 279).

⁸⁸See below for some further discussion.

intended to address legal or social moralism (whatever uses others might put it to).

Consider Mill's treatment of the question of sexual depravity. In his 1854 diary, he writes:

...what any persons may freely do with respect to sexual relations should be deemed to be an unimportant and purely private matter, which concerns no one but themselves. If children are the result, then indeed commences a set of important duties towards the children, which society should enforce upon the parents much more strictly than it now does. But to have held any human being responsible to other people and to the world for the fact itself, apart from this consequence, will one day be thought one of the superstitions and barbarisms of the infancy of the human race. (CW XXVII, 664)

What does the work here is, I believe, merely the distinction between self- and other-regarding considerations. It is true that society may deem certain consensual practices immoral, but Mill argues that, whatever is thought of them, the consideration of society's jurisdiction is a function only of whether the action "concerns no one but themselves". Thus, if there is a child, or if there are other social effects of the sexual activity in question, then social or legal authority may rightfully consider whether and how to intervene.

There are, of course, considerations that concern the virtue or good of only the individual. These concern "morality" in some broader sense than Mill stipulates. But social interference on the basis of the individual's own good – of whatever sort – is prohibited by the liberty principle (absolutely, on expertise grounds) by reference to the distinction between self- and other-regarding considerations alone. We might further remark that, on Mill's view, the mere fact that some standard of behavior is the prevailing custom does not figure in the justification of legal enforcement. It is just that, with regard to any social custom, a well-organized social authority may rightfully decide to enforce

that custom or standard on the basis of its own justificatory calculation of the balance of goods and harms.

The conclusion that Mill should not be invoked in contemporary debates about legal moralism is not as uninteresting as it might seem. Seeing why this conclusion is true will help us to appreciate what is, and is not, doing work in Mill's liberty principle, and provides a basis for addressing another formulation of the anti-moralist thesis, grounded in the notion of rights-violations, as it pertains to the liberty principle.

Section 3: The Textual Case for Mill's Anti-moralism

I do not mean to suggest that the common attribution of anti-moralism to Mill is unreasonable. There are passages and examples in *On Liberty* that seem to be indications of it, and the anti-moralist interpretation of the liberty principle now has a long history. Following the lead of *On Liberty's* first great critic, James Fitzjames Stephen, it was carried forward by both parties to the Hart-Devlin debate, which was responsible for the revival of Mill's political philosophy mid-twentieth century, and continues to feature in discussions by prominent contemporary Mill scholars. The key evidence is thought to come from the most famous statement of the liberty principle itself:

That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. *His own good, either physical or moral, is not a sufficient warrant. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because, in the opinions of others, to do so would be wise, or even right.* (CW XVIII 223-224; emphasis added)

The italicized lines are thought to rule out categorically not only paternalistic interference with individual liberty, but also legal and social moralism. On the standard view, the liberty principle excludes, as reasons that could justify social interference with individual

liberty, appeals to what is morally right or wrong distinct from harm considerations.

Citing the passage above, the following kind of comment on Mill is thus common: "...he flatly renounces paternalism (as well as moralism: reasons based on claims of the inherent wrongness of an action, without regard to its consequences). A person's 'own good, either physical or moral, is not a sufficient warrant' for compelling him to act or to forebear from acting (I, 9)".⁸⁹

Some confusion might have been avoided had John Morley's early admonition to Stephen been heeded⁹⁰:

Mr. Mill never says, nor is it at all essential to his doctrine to hold, that a government ought not to have a "standard of moral good and evil which the public at large have an interest in maintaining, and in many instances enforcing." He only set apart a certain class of cases to which the right or duty of enforcement of the criminal standard does not extend – self-regarding cases.⁹¹

This anticipates the line on Mill I am pursuing. But now consider the main part of Stephen's reply to Morley:

Mr. Mill says in express words: 'Society, as society, has no right to decide anything to be wrong which concerns only the individual.' This I think is equivalent to denying that society ought to have a moral standard, for by a moral standard I understand a judgment that certain acts are wrong, whoever they concern. Whether they concern the agent only or others as well is and must be an accident. Mr. Morley, however, thinks that Mr. Mill's opinion was that society may and ought to have a moral standard, but ought not to enforce it in the case of self-regarding acts.⁹²

⁸⁹Daniel Jacobson, "Mill on Liberty, Speech, and the Free Society," *Philosophy and Public Affairs* 29, no. 3 (2000), pp. 288-289.

⁹⁰Mill and Morley were philosophical allies, but also friends, and so there is some reason to treat Morley's reply as the informed comment of someone close to Mill, rather than that of some third-party speculator.

⁹¹John Morley, "Mr. Mill's Doctrine of Liberty," in John Stuart Mill, *On Liberty*, ed. Edward Alexander (Broadview Press, 1999).

⁹²James Fitzjames Stephen, *Liberty, Equality, Fraternity*, ed. Stuart D. Warner (Indianapolis: Liberty Fund 1993), p. 101 n. 1.

Stephen and Morley appear to be talking past one another. Stephen identifies the question of anti-moralism, but Morley is right to say that Mill's view – though it prohibits the enforcement of harmless wrongs – simply does not contain the necessary elements to motivate the question Stephen raises. Mill does not address it. He allows that society may have a moral standard, but this standard concerns only good and harm to others and does not address the category of free-floating evils. More characteristic are passages like this:

But it is the privilege and proper condition of a human being, arrived at the maturity of his faculties, to use and interpret experience in his own way. It is for him to find out what part of recorded experience is properly applicable to his own circumstances and character. The traditions and customs of other people are, to a certain extent, evidence of what their experience has taught them; presumptive evidence, and as such, have a claim to this deference: but, in the first place, *their experience may be too narrow; or they may not have interpreted it rightly. Secondly, their interpretation of experience may be correct but unsuitable to him.* Customs are made for customary circumstances, and customary characters: and his circumstances or his character may be uncustomary. (CW XVIII, 262; emphasis added)

The difficulty of applying any customary standard to particular circumstances is such that we are better off leaving decision-making over how to achieve one's own good to the individual. He has in mind the problem of moral paternalism, but not the sort of moralism Stephen identifies.

Mill's supposed anti-moralism was also much cited in the wake of the Wolfenden Report's recommendation in 1957 to liberalize British law concerning, among other things, consensual homosexual sex.⁹³ Invoking Mill, the Report argued that "there must remain a realm of private morality and immorality which is, in brief and crude terms, not the law's business" (§61). Mill's anti-moralism was cited by both Hart and Devlin in their

⁹³Both parties to the Hart-Devlin debate agreed that Mill wanted to rule out social moralism. See H. L. A. Hart, *Law, Liberty and Morality* (Oxford: Oxford University Press, 1963) and Patrick Devlin, "The Enforcement of Morals" (1959), reprinted as "Morals and the Criminal Law" in *The Enforcement of Morals* (Oxford: Oxford University Press, 1965), pp. 1-25.

famous debate concerning the Report. Again, the anti-moralism issue identified by Stephen, and pursued by those following on the Wolfenden Report, simply does not come into play for Mill in his thinking about society's jurisdiction, which culminates in his liberty principle. In the next section, I try to address just *why* it does not arise for Mill in his rationale for the liberty principle, but here we might further pursue the textual evidence of the standard view.

In the passage from the liberty principle (from *On Liberty*, I.9) above, I italicized the sentences that are taken to indicate Mill's categorical rejection of the appeal to prevailing non-harm-related moral attitudes or beliefs as a consideration capable of justifying interference in individual liberty. That portion reads:

His own good, either physical or moral, is not a sufficient warrant. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because, in the opinions of others, to do so would be wise, or even right.

In light of this, it is commonly accepted that Mill's liberty principle is in the first instance directed to two general concerns: first, to limit excessive interference by social authority in judgments about the way one's life ought to go (his anti-paternalism); second, to limit excessive interference on moral grounds (his anti-moralism). Consider Dworkin's treatment of the liberty principle. He introduces some abbreviations: *LP* to refer to legal paternalism, *MP* for moral paternalism, and *LM* for legal moralism.⁹⁴ With regard to the text just above from the canonical statement of the liberty principle, he writes:

Although the first sentence suggests that anti-paternalism is at issue here, [Mill] seems to introduce the idea of LM in the last clause. LP is represented by "his own . . . physical good"; MP by "his own . . . moral good"; but it seems a

⁹⁴Dworkin employs these definitions, from Feinberg (see note 1): "(3) Legal Paternalism (LP). Preventing harm to the person being prohibited from acting. (4) Legal Moralism (LM). Preventing inherently immoral, though not harmful or offensive, conduct. (5) Moralistic Legal Paternalism (MP). Preventing moral harm (as opposed to physical, psychological, or economic harm) to the actor himself."

distinct ground of coercion to make reference to what others think would be “right.” The second sentence is then most naturally understood so that what it is “better” for him to do is what is morally better for him, what will make him “happier” is what is psychologically better for him to do, and what is “right” is what is morally right. One other point worth noticing is that Mill only relativises LM, not moral paternalism. He does not speak of what “in the opinion of others” would be better for him, or would make him happier – only what would be wise or right.⁹⁵

Dworkin thus takes Mill to rule out both paternalism and legal or social moralism. Brink, using a simpler taxonomy, argues that Mill excludes “paternalistic and moralistic restrictions of liberty.” A restriction is paternalistic, he writes, “if it is done for the individual’s own benefit” and moralistic “if it is done to ensure that [the individual] acts morally or not immorally.”⁹⁶ It is easy to find examples of other commentators making similar claims.

But in the key lines from the liberty principle passage, it is doubtful that the distinct idea of a moralistic restriction has been introduced. When Mill writes, for instance, that “[h]is own good, either physical or moral, is not a sufficient warrant”, this use of “moral” is not of the right kind to indicate Mill’s “anti-moralism” in the sense Dworkin and Brink intend. “Moral” here is a contrast term for “physical”. This is well-established usage, often employed by Mill, according to which “moral” refers to psychological, emotional, or otherwise intangible (non-physical) features of something, as in the idea of “moral support”. Compare, at the beginning of Chapter III: “...men should be free to act upon their opinions — to carry these out in their lives, without hindrance, either physical or moral, from their fellow-men, so long as it is at their own

⁹⁵Gerald Dworkin, “Moral Paternalism,” *Law and Philosophy* (2005) 24, p. 306.

⁹⁶David Brink, “Mill’s Moral and Political Philosophy,” *Stanford Encyclopedia of Philosophy* (Spring 2009 Edition), Edward N. Zalta (ed.), §3.1, URL = <http://plato.stanford.edu/entries/mill-moral-political/index.html>.

risk and peril” (CW XVIII, 260). What might “moral hindrance” mean if not emotional or psychological? Also: “Such are the differences among human beings in their sources of pleasure, their susceptibilities of pain, and the operation on them of different physical and moral agencies...” (Ibid., 270). In that portion of the text, Mill then also uses “spiritual” as complement to “physical”: “...human beings more like one another in their whole physical and spiritual conformation...” (Ibid.). The “moral” and the “spiritual” are roughly the same for Mill, in this sense of “moral”.

This is not to deny that Mill also uses “moral” in the sense related more directly to moral theory or ethics. But to try to read “moral,” in that sense, into the phrase “[h]is own good, either physical or moral...” would be baffling, to say the least. Is Mill’s concern exclusively with either an individual’s physical good or his normative moral status, and nothing else? In context, Mill is trying with the phrase “physical or moral” to capture a complete set of concerns, and this is achieved by reading “moral” as roughly “non-physical”. In other passages, as in his discussion of the poetic temperament in “Tennyson’s Poems,” Mill uses “physical or moral” in just this sense:

There are in the character of every true poet, two elements, for one of which he is indebted to nature, for the other to cultivation. What he derives from nature, is fine senses: a nervous organization, not only adapted to make his outward impressions vivid and distinct (in which, however, practice does even more than nature), but so constituted, as to be, more easily than common organizations, thrown, either by *physical* or *moral* causes, into *states* of enjoyment or suffering, especially of enjoyment: states of a certain duration; often lasting long after the removal of the cause which produced them; and not local, nor consciously physical, but, in so far as organic, pervading the entire nervous system. This peculiar kind of nervous susceptibility seems to be the distinctive character of the poetic temperament. (CW I, 413; emphasis added)

And in an 1854 letter to his wife Harriet, he writes of her younger son Algernon: “He has none of the feelings now apparently either *physical* or *moral*, of an invalid—& I often

wonder what has become of his ailments” (CW XIV, 166; emphasis added). In light of such passages, I argue, the claim that “[h]is own good, either physical or moral, is not a sufficient warrant” is not meant to indicate anti-moralism in the sense commonly attributed to Mill, but merely anti-paternalism with regard to the total set of an individual’s self-regarding concerns. We might conclude this point with a passage from his *Principles* in which he argues that the “physical and moral good” of its citizens *is* the proper aim of government: “It is the proper end of government to reduce this wretched waste to the smallest possible amount, by taking such measures as shall cause the energies now spent by mankind in injuring one another, or in protecting themselves against injury, to be turned to the legitimate employment of the human faculties, that of compelling the powers of nature to be more and more subservient to *physical* and *moral* good” (CW III, 971). Mill is not thinking of normative moral good per se, but of emotional well-being (which figures in any justificatory calculation within his utilitarian framework).

This sense of “moral” also figures in Mill’s discussion of sanctions, as in his distinction in *On Liberty* between “physical force in the form of legal penalties, or the moral coercion of public opinion” (CW XVIII, 223) earlier in the liberty principle passage. Consider that in an early essay, “Ireland” (1825), when considering the sway of priests over parishioners, and “the accusation of levying money, by improper means, from the people,” Mill asks: “Since after all no *physical* coercion was used, what definition is it possible to give of moral coercion?” (CW VI, 73-74). Public opinion, or the sway of priests in this case, can only coerce us through non-physical – psychological, emotional or “spiritual” – means, having to do with reputation or esteem, or with one’s

psychological ease in getting along in social circumstances. Legal penalties, however, can take the form of physical punishment, even execution. (Left out of this division, noticeably, are the ways in which legal penalties may play a role in moral coercion.)

But “moral coercion of public opinion” as a contrast with “physical force in the form of legal penalties” also brings to mind Bentham’s distinction between political or legal sanction, on one hand, and moral or popular sanction, on the other. In Chapter III of his *Introduction to the Principles of Morals and Legislation*, Bentham identifies

four distinguishable sources from which pleasure and pain are in use to flow: considered separately they may be termed the *physical*, the *political*, the *moral* and the *religious*: and inasmuch as the pleasures and pains belonging to each of them are capable of giving a binding force to any law or rule of conduct, they may all of them termed *sanctions*. (Bentham, *IPML*, III.2).

The physical sanction results from the natural course of things, though typically incurred by one’s own imprudence. When one falls while climbing a tall tree, broken bones are a likely physical sanction. The religious sanction results from divine acts. When John Hagee argued that God flooded New Orleans because the city was about to host a large gay pride parade, he appealed to the idea of religious sanction. Because neither of these sanctions is determined by the judgment of human beings, they are not Mill’s concern in *On Liberty*. But political and moral sanctions, as Bentham calls them, are relevant to Mill’s purposes. The political sanction results from the action of a state official, such as a judge, who has been granted certain powers under a formal government system to enforce the law. When one is sentenced to death and electrocuted by prison officials, this is a political sanction. The moral (or “popular”) sanction results from the action of those in the community with whom we happen to interact during the course of our lives, in accordance with their own judgment or disposition, and “not according to any settled or

concerted rule” as in the case of law (Ibid., III.5). When one is shunned by friends for having lied to them, this is a moral sanction. The difference among these sanctions is not in the nature of the pleasure or pain they cause, but “in the circumstances that accompany their production” (Ibid., III.8).

Bentham encourages an ambiguity about “moral sanction” when he writes that if a “calamity” befalls an individual “for want of any assistance which his *neighbour* withheld from him out of some dislike to his *moral* character,” then it is “a punishment of the *moral* sanction” (Ibid., III.9). One might suppose, then, that what makes something a moral sanction is that it is the result of some moral judgment. But what is important (for clarity’s sake) in Bentham’s account is that a moral sanction results from others in society having a poor opinion of one’s dispositions and behavior, and is not inflicted through any political or legal mechanism. This, at least, is how Mill’s takes it.

Much more might be said about Bentham’s distinction, but the present point is that Mill accepts the difference between legal or political sanctions, on one hand, and moral or popular sanctions, on the other. His understanding of the distinction is summarized in his “Bentham” (1838), as follows (leaving out physical sanction):

Accordingly, Bentham's idea of the world is that of a collection of persons pursuing each his separate interest or pleasure, and the prevention of whom from jostling one another more than is unavoidable, may be attempted by hopes and fears derived from three sources -- the law, religion and public opinion. To these three powers, considered as binding human conduct, he gave the name of sanctions. The political sanction, operating by the rewards and penalties of the law; the religious sanction, by those expected from the Ruler of the Universe; and the popular which he characteristically calls also the moral sanction, operating through the pains and pleasures arising from the favour or disfavour of our fellow-creatures. (CW X, 97)

It is telling that in Mill’s description of the moral sanction he leaves out any mention of specifically “moral” judgment over and above the favor or disfavor of one’s “fellow-

creatures”. To emphasize that it is the social disfavor that matters, and not the (“moral”) nature of that disfavor, Mill almost without fail refers to this category as “moral or *popular* sanction”. What makes for moral or popular coercion is the psychological effect on the individual due to evaluation by his “fellow-creatures,” as opposed to “the rewards and penalties of the law”. It is worth noting, however, that Mill’s sense of “moral” sanction is capacious enough to include the sort of psychological sanction – guilt – appropriate to the narrower sense of “morality” he offers in Ch. V of *Utilitarianism*. But, again, this is only relevant in cases of “wrongs” that involve “harm to others.”

Mill thus adopts the distinction between those sanctions that result from official organs of the state, i.e. political or legal penalties, and those sanctions that result from the informal actions of other people in the normal course of one’s social life. Although on Bentham’s account a moral sanction could be physical – imagine if a social acquaintance were to punch me for insulting him – typically, Mill argues in *On Liberty*, moral sanction works by loss of reputation or esteem: “If anyone does an act hurtful to others, there is a *prima facie* case for punishing him, by law, or, where legal penalties are not safely applicable, by general disapprobation” (CW XVIII, 224). In Mill’s formulation, then, we find an emphasis on the “favor or disfavor of our fellow-creatures,” which evokes the “moral coercion of public opinion.” Mill is interested in the coercion by society that does not involve the official organs of the state and works primarily by affecting one’s social standing. Although the moral/legal distinction differs from the moral/physical distinction, it is worth noting that on Mill’s view, unlike Bentham’s, moral coercion becomes associated almost exclusively with psychological or emotional social pressure.

The purported evidence of Mill's anti-moralism in the liberty principle passage thus comes down to the last word of this passage:

His own good, either physical or moral, is not a sufficient warrant. He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because, in the opinions of others, to do so would be wise, or even right.

But this use of "right" is not an unambiguous expression of anti-moralism. The pair of sentences read as a blanket prohibition on social interference in matters that concern only the individual, especially in light of conflicting opinion. One might press the point, in light of Mill's idiosyncratic use of words, and given that the sentence as a whole concerns *one's own good*, that the word "right" could not be short for "morally right" at all. What is good for the individual is not morality's concern, because, on Mill's view morality is *social by definition*. For example, in a passage from *On Liberty* discussing actions that harm others, Mill then writes that *dispositions* become "properly immoral" only if they threaten a "breach of duty *to others*":

And not only these acts, but the dispositions which lead to them, are *properly immoral*, and fit subjects of disapprobation which may rise to abhorrence. Cruelty of disposition; malice and ill-nature; that most anti-social and odious of all passions, envy; dissimulation and insincerity, irascibility on insufficient cause, and resentment disproportioned to the provocation; the love of domineering over others; the desire to engross more than one's share of advantages...; the pride which derives gratification from the abasement of others; the egotism which thinks self and its concerns more important than everything else, and decides all doubtful questions in his own favor; — these are moral vices, and constitute a bad and odious moral character: *unlike the self-regarding faults previously mentioned, which are not properly immoralities, and to whatever pitch they may be carried, do not constitute wickedness*. They may be proofs of any amount of folly, or want of personal dignity and self-respect; but *they are only a subject of moral reprobation when they involve a breach of duty to others*, for whose sake the individual is bound to have care for himself. (CW XVIII, 279; emphasis added)

This passage suggests that if Mill is speaking in his own voice when using the term "right" in the liberty principle passage, he could not have meant "morally right"; for Mill,

the *moral* evaluation of a person's character is an evaluation of the tendency of one's dispositions to affect others. Moral vices are those that "involve a breach of duty *to others*, for whose sake the individual is bound to have care for himself." Moral matters are social, other-regarding matters, but the issue at the point of Mill's use of the term "right" in the liberty principle passage is only the individual's "own good" – a purely self-regarding matter. In his own terms, he could not have been referring to an opinion about what is morally right.

Admittedly, Mill's use of "right" in that passage might most naturally read as "right according to prevailing moral opinion". This is indicated by his phrase "in the opinions of others." It refers to societal judgment, and society might not restrict the domain of the moral, as Mill does, to social matters. Thus, when using the term "right", Mill may not be writing in his own idiosyncratic terms; society might say "consensual homosexual sex is not right, morally, and so it is forbidden as such." But, as it stands, Mill's emphasis in that entire passage is on what is for the individual's "own good". It is moral paternalism alone that Mill would reject, then, not legal or social moralism.

We can reinforce this point by noting how odd Dworkin's reading is of the last sentence in the passage we have been considering. Dworkin takes it to refer successively to moral paternalism ("better for him to do so"), legal paternalism ("it will make him happier"), and legal or social moralism ("to do so would be... right").⁹⁷ But, keeping in mind both Mill's utilitarianism and the distinctive sentence structure, the second "because" clause should be read as a gloss on the first, rather than as a separate point.

⁹⁷Hart seems to endorse this same reading (before Dworkin). See his "Paternalism and the Enforcement of Morality," in Radcliff, ed., *Limits of Liberty*, pp. 61-2. Reprinted from *Law, Liberty, and Morality*. Hart even writes that "Mill no doubt might have protested against a paternalistic policy of using law... nearly as much as he protested against laws used merely to enforce positive morality..." (p. 61). Hart then cites only those phrases emphasized by Dworkin.

Mill does not write that it would be “better to do so” but that it would be “better *for him* to do so,” and this is understandably cashed out by Mill as “will make him happier”.

“Happier” and “better for him” are not clearly separate categories Mill. What is ruled out here, in both cases, is interference on the basis of an appeal to what is better (moral or otherwise) *for him*. And so, in context, the same must be true for the third “because” clause. Mill’s aim is to rule out paternalism, including moral paternalism, but not legal or social moralism.

If this is right, then the most famous statement of the liberty principle offers no clear evidence that Mill constructed his principle partly in an effort to rule out legal or social moralism, over and above his rejection of paternalism (moral or otherwise).

It might be argued that a passage a few paragraphs later is less easily explained away:

...the principle requires liberty of tastes and pursuits; of framing the plan of our life to suit our own character; of doing as we like, subject to such consequences as may follow: without impediment from our fellow creatures, so long as what we do does not harm them, even though they should think our conduct foolish, perverse, or wrong. (CW XVIII, 226)

What could be intended by these last three adjectives (it might be asked), if not (in part) a prohibition on inherently immoral or depraved behavior? As it happens, as we shall see in a moment, I think this passage is also liable to misunderstanding. But it is worth mentioning that, even if this provides some support for the attribution of anti-moralism, the evidence for this interpretation remains exceedingly sparse. This is particularly significant because Mill tended to repeat his central claims. The liberty principle itself is presented, arguably, more than a dozen times in *On Liberty*. But, in most of those reiterations, there is simply no mention of prohibiting considerations of morality as such

from the deliberations of social or legal authority. Consider two textually prominent reformulations, at the beginning of Chapters IV and V:

As soon as any part of a person's conduct affects prejudicially the interests of others, society has jurisdiction over it, and the question whether the general welfare will or will not be promoted by interfering with it, becomes open to discussion. But there is no room for entertaining any such question when a person's conduct affects the interests of no persons besides himself, or needs not affect them unless they like (all the persons concerned being of full age, and the ordinary amount of understanding). In all such cases there should be perfect freedom, legal and social, to do the action and stand the consequences. (CW XVIII, 276)

The maxims are, first, that the individual is not accountable to society for his actions, in so far as these concern the interests of no person but himself. Advice, instruction, persuasion, and avoidance by other people, if thought necessary by them for their own good, are the only measures by which society can justifiably express its dislike or disapprobation of his conduct. Secondly, that for such actions as are prejudicial to the interests of others, the individual is accountable, and may be subjected either to social or to legal punishments, if society is of opinion that the one or the other is requisite for its protection.

...it must by no means be supposed, because damage or probability of damage, to the interests of others, can alone justify the interference of society, that therefore it always does justify such interference. (Ibid., 292)

Both of these formulations emphasize the jurisdictional nature of the principle, and the basis of jurisdiction in the distinction between self- and other-regarding activity. We find, first, the question of the grounds of social or legal authority's rightful interference with some behavior and, second, the question of whether some sort of interference would be *right* or justified. The first question is answered by appeal to considerations concerning what might affect the interests of others"⁹⁸ The second question is left "open to discussion," once jurisdiction has been settled. But the present point is not to elucidate

⁹⁸I leave to the side the question of what ways of affecting others might satisfy this requirement.

the jurisdictional nature of the principle,⁹⁹ so much as it is to point out what is missing from these formulations, namely, any phrase that would suggest attributing anti-moralism to Mill, except as a byproduct of his commitment to the consideration of goods and harms for others as the only acceptable justification of social or legal interference. I put off until the next section a discussion of whether his avoidance of free-floating evils in the liberty principle should be considered a (glaring) oversight, or merely the result of a general moral and political framework in which Mill rules out the consideration of free-floating evils.

What, then, should be said concerning the prohibition on interference on the basis of whether an individual's action is "foolish, perverse, or wrong"? The phrase should bring to mind two important set of considerations that arise in Mill's work. First – a (plausible) view that I will not endorse – the three words might be meant to indicate the three compartments Mill distinguishes, in his *System of Logic*, of the "Art of Life," namely, prudence, aesthetics, and morality. I can here only roughly sketch Mill's picture. All three compartments of the Art of Life are governed by a fundamental "teleological" principle, the principle of utility. Prudence concerns what is "expedient," aesthetics what is "beautiful or noble" in us, and morality what is "right" (see CW VIII, 949). Morality, as we have seen, is limited to other-regarding matters, and involves the ideas of duty, sanction, credit, and blame. Prudence and aesthetics are not similarly limited, in

⁹⁹But refer back to the discussion of free trade at the beginning of this chapter for a clear example of it. There he writes that because trade is a "social act" it "comes within the jurisdiction of society". His discussion of marriage restrictions is another clear example. He writes in an 1865 letter to Henry MacCormac in defense of restrictions on who may get married: "For all our actions which affect the interests of other people I hold that we are morally, & may without violation of principle be made legally, responsible. I have however expressly guarded myself against being understood to mean that legal restrictions on marriage are expedient. That is an altogether different question, to which I conceive no universal & peremptory answer can be given, & in deciding which for any particular case due weight ought to be given to the probability of consequences of the kind you mention as well as of any other kinds." (CW XVI, 1124) Here we see both the jurisdictional and justificatory elements at work.

principle,¹⁰⁰ though such considerations are typically focused on the individual's own good. The former concerns, for Mill, the judicious promotion of happiness in action, often by a demonstration of restraint with regard to one's immediate desires; the latter concerns the development of admirable human capacities and habits or dispositions, chief among them wisdom, individuality, and the disposition to unselfishness. By contrast with prudence, we should point out that morality also introduces the idea of what may *rightfully* be done, even if not expedient. As we have seen, Mill writes in an 1865 letter: "It is not however a necessary consequence that because a thing might *rightfully* be done, it is always expedient to do it" (CW XVI, 1033).¹⁰¹ The aesthetic compartment might be thought to be purely self-regarding, but Mill indicates that noble human beings are more likely to behave in ways that promote the general happiness, and so their personal qualities are not entirely sealed off from other-regarding consideration.

On this reading of "foolish, perverse, or wrong," then, we can imagine that society might object to an individual's action on the basis of its not being expedient, noble (in some sense), or rightful and dutiful, all in accordance with Mill's Art of Life. The claim in the passage we are considering would be that such objections should be prohibited "so long as what we do does not harm [others]". If this is the right reading, it would seem to lend support –though limited – to the attribution of anti-moralism to Mill, because it would seem to put conceptual space between the idea of harm to others and the idea of an objection of moral grounds. But, given that Mill's entire teleology or doctrine

¹⁰⁰With prudence, for example, social or legal authority's decision to pursue some policy at the justificatory stage is a question of prudence with regard to society's interests, i.e. once it has been granted jurisdiction over the relevant matter. Thus, e.g., in his *Principles* he can write, "Wherever population is not kept down by the prudence either of individuals or of the state, it is kept down by starvation or disease" (CW II, 345).

¹⁰¹In terms I have not pursued elsewhere, we should therefore see the liberty principle as a moral principle in Mill's scheme. This I have indicated elsewhere by emphasizing its attention to what is *rightfully* done.

of ends is governed by the principle of utility, then if we want to use it as an interpretive touchstone here, the charge that something is “wrong” *must* refer at some point to the balance of good and harm. This interpretation only confuses the picture of an otherwise systematic thinker.

It might said rather that the key term in the attribution of anti-moralism is not “wrong,” but “perverse”. Perversity is just the sort of thing that moralistic intervention is intended to control, whatever the consequences. But, on the current reading in light of Mill’s Art of Life, perversity should – like “wrong” – be understood within the context of the principle of utility. The perversity Mill would have in mind on this view would hardly amount to a free-floating evil.

But could we understand perversity here in the moralistic sense, and put aside Mill’s Art of Life? I will suggest that we should put it aside (though not all of the concerns it encompasses) in the current context, but I do not think this helps the anti-moralistic interpretation, for the reason that Mill simply intends something very different by his use of “perverse”. Mill does not, in the course of his Collected Works, use the term “perverse” to describe the kinds of actions that might jump to mind in the context of the moralism debate. Perverse conduct, for Mill, is rather conduct that fails to be conducive to happiness for a particular kind of reason – namely the failure of the individual to be appropriately focused on the good to be achieved. One is perverse when one is obstinate, corrupt, or prejudiced, or similarly incapable of acting on even good information about how to achieve some end. This is the most common historical sense of the term, capturing a key part of our idea of “perverse incentives” that fail to achieve their end

because of some lack of attentiveness, by those who designed the incentives, to the end to be achieved, and it is this use of “perverse” that pervades Mill’s writings.

My preferred interpretation of “foolish, perverse, or wrong” is suggested by Mill’s comment in an 1847 letter to John Austin about the apparent decline of “gentlemanhood” in their time: “Whatever is valuable in the traditions of gentlemanhood is a *fait acquis* to mankind; as it is really grounded on the combination of good feeling with correct intellectual perceptions, it will always be kept alive by really cultivated persons” (CW XIII, 713). Mill suggests that a certain kind of behavior is valuable because it combines two key concerns – concerns which appear also in his organizational thinking about social and political institutions – namely, a sufficient orientation to the good (parallel to “identity of interest” in the organizational context) and epistemic considerations (parallel to “wisdom” or expertise). Not only do they appear in his organizational thinking, but, as Stefan Collini writes: “Reproaches to his countrymen for their insular prejudice and ignorance are a staple ingredient in Mill’s writing” (“Introduction” to CW XXI, xvi). The passages in which he addresses these considerations are too numerous to cite, but in *On Liberty* we see him worry, e.g., that even when a “true opinion abides in the mind, but abides as a prejudice, a belief independent of, and proof against, argument — this is not the way in which truth ought to be held by a rational being” (CW XVIII, 244). Such prejudice, I have suggested, is an example of perversity in Mill’s sense.

I believe that reflection on these attentiveness and epistemic considerations indicates much of what Mill has in mind in the passage we are considering. There are different ways that individuals may fail to be rational. They may assess risks poorly,

engage in short-term thinking, or carelessly important considerations out of the calculus. This is, I think, what Mill intends by “foolish”. They may also be willfully blind, or subject to prejudice, or corrupt. This is, I think, what Mill intends by “perverse”. But individuals may also fail to do what is best – for themselves or others – even though they are rational. They have not failed to attend to the available evidence, and are not subject to prejudice. Despite a worthy effort, they lack “correct intellectual perceptions”. This is, I think, what Mill intends by “wrong” in the current context. Mill’s argument in that passage is that where there is no harm to others, social or legal authority may not intervene on the basis of its opinion that the individual’s conduct is irrational in that instance, or that the individual has, in fact, made an incorrect determination concerning his own good, despite a worthy effort. This interpretation has the advantages that it is not at odds with Mill’s Art of Life, invokes his framework for thinking about good practical judgment in other contexts, and does not attribute to Mill a position (anti-moralism) that otherwise lacks textual support.

It may yet be argued, not without reason, that Mill’s concrete examples in *On Liberty* exhibit an anti-moralist strain in his thought. But what is interesting in these cases – which do seem to point to moralistic interference – is that Mill addresses them not by prohibiting moralistic interference, but by appeal to the distinction between self- and other-regarding considerations that underlies his anti-paternalism. In the next section, I develop an account of why Mill’s responses take this form. But if we consider his examples, the textual evidence for Mill’s anti-moralism thus remains slight. Let us consider just a few.

Mill considers the example of outlawing pork consumption in an Islamic state:

Suppose now that in a people, of whom the majority were Mussulmans, that majority should insist upon not permitting pork to be eaten within the limits of the country. This would be nothing new in Mahomedan countries. Would it be a legitimate exercise of the moral authority of public opinion? and if not, why not? The practice is really revolting to such a public. They also sincerely think that it is forbidden and abhorred by the Deity. Neither could the prohibition be censured as religious persecution. It might be religious in its origin, but it would not be persecution for religion, since nobody's religion makes it a duty to eat pork. *The only tenable ground of condemnation would be, that with the personal tastes and self-regarding concerns of individuals the public has no business to interfere.* (CW XVIII, 285)

Although the restriction on eating pork would appear to be a prime example of social moralism, Mill's response to it does not invoke anti-moralism. His discussion of this case is in certain respects is confusing, but it is clear enough that the "only tenable ground" Mill recognizes refers just to the illegitimacy of restrictions in "personal," i.e. self-regarding, affairs. We might want to adduce anti-moralistic reasoning, but Mill does not do so.

Mill's treatment of the question of the Catholic restriction on married clergy, even on clergy of Protestant faiths, is strikingly similar:

The people of all Southern Europe look upon a married clergy as not only irreligious, but unchaste, indecent, gross, disgusting. What do Protestants think of these perfectly sincere feelings, and of the attempt to enforce them against non-Catholics? Yet, if mankind are justified in interfering with each other's liberty in things which do not concern the interests of others, on what principle is it possible consistently to exclude these cases? (CW XVIII, 285)

Again, in what would seem to be a good example of moralistic restriction, Mill appeals only to the problem of "interfering with each other's liberty in things which to not concern the interests of others". This is no rebuke to society's enforcing a moral standard, except in those matters that concern only the individual. Think of Morley.

In a third example, which also appears to involve a moralistic restriction, Mill considers the case of a Calvinist and Methodist majority restricting "amusements":

How will the remaining portion of the community like to have the amusements that shall be permitted to them regulated by the religious and moral sentiments of the stricter Calvinists and Methodists? Would they not, with considerable peremptoriness, desire these intrusively pious members of society to mind their own business? This is precisely what should be said to every government and every public, who have the pretension that no person shall enjoy any pleasure which they think wrong. (Ibid., 286)

Again, Mill does not argue on unambiguously anti-moralistic grounds. It is true that he objects to interference on the basis of what some majority “think wrong,” but his comment that they ought to “mind their own business” seems to invoke the distinction between what affects others’ interests, and what does not. Each of these three cases involves a rejection of what might be regarded as moral paternalism, but in none of them does Mill refer specifically to the moralistic nature of the restriction as part of what condemns it. This is also true, as we saw, in Mill’s consideration of restrictions on consensual sexual practices.

I indicated earlier that Mill tended to be repetitive on his main points. Had he wanted to emphasize the exclusion of specifically moral considerations, he would have done so. There is, I suggest, little evidence to support the common anti-moralist attribution, and much silence speaking against it. Of course, if there are harmless wrongs, then Mill’s principle rules out restricting them (they are harmless, after all), and in some trivial sense Mill is committed to what is called legal or social anti-moralism. But there is little, if any, support for the view that Mill himself has introduced a further element into his liberty principle beyond his concern with self- and other- regarding considerations, and with who is in the best position handle them. Mill first asks, as in the free trade case: is the action social? The only part of individual conduct properly evaluated by social authority is that which concerns others. If it is not social, then the anti-paternalistic

stricture holds. In the case of consensual sexual practices, such joint activities among competent reasoning adults are, for Mill, to be treated as if they are the private activities of individuals. Like individual activities, they may be interfered with only if they affect individuals other than those engaged in the consensual activity. In any case of consensual sex, the good of the individuals consensually engaged is off-limits on anti-paternalistic grounds.

Section 4: Mill's Rejection of Free-Floating Evils

It might be argued that Mill's non-recognition of free-floating evils is a lamentable oversight on his part, and one that limits the power of his liberty principle. To this the response must be, first, that what appears to be an oversight is in fact a consequence of a more general philosophical position and, second, that the power of the liberty principle is diminished only in light of what now appear to be excessive claims concerning its aims. So much the worse for Mill, one might say. But if this result follows from trying to get a systematic grasp on Mill's moral and political thought, then one might think it part of a valuable project. In this section, I consider Mill's strategy for dealing with those free-floating evils adduced in the moralism debate. I argue that they are not addressed by the liberty principle itself because that principle is already embedded within a general philosophical framework in which Mill rejects claims concerning free-floating evils because they are either completely or partly translatable into talk of goods and harms, and where only partly so, the remainder is inconsistent, mysterious, or unintelligible.

To see this strategy in action we will examine Mill's "Whewell on Moral Philosophy" (1852). As we saw earlier, Mill rejects Whewell's charge that utilitarians rule out of consideration "morality, as such" in matters of legislation. Rather, Mill rules out non-harm-related moral considerations on metaphysical and (especially) epistemological grounds.

Most of the essay is taken up with two tasks: first, the defense of the utilitarian theory of morality against Whewell's (mis)representations of it and thereby to explain how the objections he raises against utilitarianism (and, specifically, Bentham) fail; second, the attempt to make sense of Whewell's own non-consequentialist contribution to the theory of morality. Here we will focus on the second of these tasks.

Against Whewell, Mill first defends Bentham's division of the opponents of utilitarianism into two groups which together comprise "all who contended that pleasure could ever be an evil or pain a good in itself, apart from its *consequences*" (CW X, 176): (1) those who adhere to the "principle of ascetism" and (2) those who adhere to the "principle of sympathy and antipathy". These rubrics are not self-explanatory. Mill argues that Bentham includes in the first group those "professing the direct negation of the utilitarian standard," by holding either that "pain was a thing to be sought, and pleasure to be avoided" (the religious ascetics) or that "pain is no evil, and pleasure is no good" (the stoics) (Ibid., 176). The second group – which will be our focus here – includes "those who, though they did not deny pleasure to be a good and pain an evil, refused to consider the pain or the pleasure which an action or a class of actions tends to produce, as the criterion of its morality" (Ibid.). Mill quotes a lengthy passage from Bentham's *Introduction to the Principles of Morals and Legislation* in which this second

group is characterized by various attempts to establish as the criterion of morality the pronouncements of moral sense, common sense, mere understanding, natural law, or “the fitness of things” (Ibid., 178). According to Bentham, these attempts have something in common: “They consist, all of them, in so many contrivances for avoiding the obligation of appealing to any external standard, and for prevailing upon the reader to accept of the author’s sentiment or opinion as a reason for itself. The phrase is different, but the principle the same” (Ibid., 177). Mill approvingly summarizes Bentham’s charge:

...he described these as followers of ‘the principle of sympathy and antipathy;’ not because they had themselves generalized their principle of judgment, or would have acknowledged it when placed undisguised before them, but because, at the bottom of what they imposed on themselves and others as reasons, he could find nothing else; because they all, in one phrase or another, placed the test of right and wrong in a feeling of approbation or disapprobation, thus making the feeling its own reason and its own justification” (Ibid.).

Bentham and Mill argue that appeals to moral sense, common sense, and so forth, supply cover stories for what would otherwise be naked appeals to one’s own feelings, or the feelings of some group. Moreover, when these cover stories are examined, they find that the secondary principles in those systems are often justified explicitly on consequentialist grounds, and what cannot be justified on consequentialist grounds is revealed to be a combination of mere assertion, obvious confusion, mysticism, or nonsense. It is not my present concern to evaluate the fairness of this charge, but rather to understand Mill’s sense of the live options in moral theory. Mill classes Whewell’s moral philosophy in the second group, and pursues Bentham’s charge in detail against him. The pursuit offers a template, I believe, for Mill’s approach to the “free-floating evil” claims associated with social and legal moralism, and suggests why, by the time he introduced his liberty principle, he did not feel the need to address or recognize them in its formulation.

Mill begins his criticism by pointing out the emptiness of some of Whewell's basic conceptual claims: "*Right* means that which we *must* do, and the rule of action is, that we must do what is right; that we must do that which we must do. This we will call vicious circle the first" (Ibid., 187). The question at issue just is what is right, or what it is we must do, and why. To answer this question, Mill notes, Whewell appeals to the notion of rights. Mill writes, "This promises something. In tracing to its elements the idea of Right, the adjective, we are led to the prior, and it is to be presumed more elementary idea, of Rights, the substantive. But now, what are rights? And how came they to be rights?" (Ibid., 188). Whewell appeals to ideal law as the basis of rights, and argues that morality extends the concern with rights to a person's "intentions as well as his actions; over his affections, his desires, his habits, his thoughts, his wishes" (quoted by Mill, Ibid., 188). A person must not only not violate others' rights, he must not desire to do so. But in relating morality to ideal law rather than extant law, Mill argues that Whewell's appeal to legal rights makes little progress toward answering the question of what is right: "So that while the meaning of *ought* is that we ought to respect rights, it is a previous condition that these rights must be such as *ought* to be respected. Morality must conform to law, but law must first conform to morality. This is vicious circle the second" (Ibid., 189).¹⁰²

Mill draws a general lesson from Whewell's contorted attempts to provide a theory of morality without appealing to an "external" standard:

Dr. Whewell has failed in what it was impossible to succeed in. Every attempt to dress up an appeal to intuition in the forms of reasoning, must break down in the same manner. The system must, from the conditions of the case, revolve in a circle. If morality is not to gravitate to any end, but to hang self-balanced in space, it is useless attempting to suspend one point of it upon another point. (Ibid., 190)

¹⁰²I will pass over Mill's presentation of "vicious circle the third". But see CW X, 189.

Whewell's position is not improved when he puts his appeal to rights into practice. The "rules of action" that express respect for rights can be discerned, he argues, "by considering that there must be such rules; that they must be rules for man; for man living among men; and for the whole of man's being... we are thus led directly to moral rules, by the consideration of the internal condition of man's being" (quoted by Mill, *Ibid.*, 190). And he asserts that this standard is more accessible than the external standard of utility for practical deliberation. Mill seems to lose his patience:

This is given as a scientific statement of the proper mode of discovering what are the rules of *morality*! We are to "deduce such rules" from four considerations. First, "that there must be such rules;" a necessary preliminary, certainly. If we are to build a wall, it is because it has been previously decided that there must be a wall. But we must know what the wall is for; what end it is intended to serve; or we shall not know what sort of wall is required. What end are moral rules intended to serve? No end, according to Dr. Whewell. They do not exist for the sake of an end. To have them is part of man's nature, like (it is Dr. Whewell's own illustration) the circulation of the blood. It is now then to be inquired *what* rules are part of our nature. This is to be discovered from three things: that they must be "rules for man; for man living among men; and for the whole of man's being." This is only saying over again, in a greater number of words, what we want, not how we are to find it. First, they must be "rules for man;" but we are warned not to suppose that this means for man's benefit; it only means that they are for man to obey. This leaves us exactly where we were before. Next, they are for "man living among men," that is, for the conduct of man to men: but *how* is man to conduct himself to men? Thirdly, they are "for the whole of man's being;" that is, according to Dr. Whewell's explanation, they are for the regulation of our desires as well as of our actions; but what we wanted to know was, *how* we are to regulate our desires and our actions? Of the four propositions given as premises from which all moral rules are to be deduced, not one points to any difference between one kind of moral rules and another. Whether the rule is to love or to hate our neighbour, it will equally answer all Dr. Whewell's conditions. These are the premises which are more "simple and satisfactory" than such "obscure and unmanageable" propositions, so utterly impossible to be assured of, as that some actions are favourable, and others injurious, to human happiness! Try a parallel case. Let it be required to find the principles of the art of navigation. Bentham says, we must look to an "external end;" getting from place to place on the water. No, says Dr. Whewell, there is a "simpler and more satisfactory" mode, viz. to consider that there must be such an art; that it must be for a ship; for a ship at sea; and for all the parts of a ship. Would Dr. Whewell prevail on any one to suppose

that these considerations made it unnecessary to consider, with Bentham, what a ship is intended to do? (Ibid., 190-191)

I quote this lengthy passage in full because it expresses something of Mill's exasperation with the intuitionist moral philosophy he regards as the only real challenge to consequentialism. He does not regard Whewell's position as a worthy opponent, but as a set of "feeble arguments" that can please only those who are already "on the same side" (Ibid., 201). Where they are not simply circular (as before), they remain utterly mysterious (as in this last passage), such that the driving element of the moral theory is neither laid bare metaphysically, nor made epistemically accessible for practical application.

Mill concludes his case by citing passages in which Whewell justifies particular moral rules by appeal to the very consequentialist considerations that he renounces in theory. Mill concludes:

Moral rules are here spoken of as means to an end. We now hear of the peace and comfort of society; of making man's life tolerable; of the satisfaction and gratification of human beings; of preventing a disturbed and painful state of society. This is utility—this is pleasure and pain. When real reasons are wanted, the repudiated happiness-principle is always the resource. It is true, this is soon followed by a recurrence to the old topics, of the necessity of rules "for the action of man as man," and the impossibility to "conceive man as man without conceiving him as subject to rules."... But any meaning it is possible to find in these phrases (which is not much) is all reflected from the utilitarian reasons given just before. (Ibid., 192)

With this we have the final element of Mill's general strategy against the only serious rival he recognizes to utilitarian moral theory: roughly speaking, what makes sense in these rival arguments appeals (explicitly or implicitly) to utilitarian considerations, and what is left over doesn't make sense. It is important to my interpretive point that Mill

himself sees it as a general strategy. He expressly extends his comments about Whewell to “all other writers of the intuitive school of morals”:

Though Dr. Whewell will not recognise the promotion of happiness as the ultimate principle, he deduces his secondary principles from it, and supports his propositions by utilitarian reasons as far as they will go. He is chiefly distinguished from utilitarian moralists of the more superficial kind, by this, that he ekes out his appeals to utility with appeals to “our idea of man as man;” and when reasons fail, or are not sufficiently convincing, then “all men think,” or “we cannot help feeling,” serves as a last resort, and closes the discussion.

Of this hybrid character is the ethics of Dr. Whewell’s *Elements of Morality*. And in this he resembles all other writers of the intuitive school of morals. They are none of them frankly and consistently intuitive. To use a happy expression of Bentham in a different case, they draw from a double fountain—utility, and internal conviction; the tendencies of actions, and the feelings with which mankind regard them. This is not a matter of choice with these writers, but of necessity. It arises from the nature of the *morality* of internal conviction. Utility, as a standard, is capable of being carried out singly and consistently; a moralist can deduce from it his whole system of ethics, without calling to his assistance any foreign principle. It is not so with one who relies on moral intuition; for where will he find his moral intuitions? (Ibid., 193-194)

Mill here argues that those who would reject the consideration of consequences as the test of morality face an inescapable predicament. And it cannot be avoided – as one might try – by claiming infallibility for one’s intuitions, or for those of some group. Mill cites the near universal agreement one enjoyed by supporters of slavery: “Dr. Whewell declares unhesitatingly that the moral judgment of mankind, when it is unanimous, must be right... He forgets that as much might have been pleaded, and in many cases might still be pleaded, in defence of the absurdist superstitions” (Ibid., 194).

Mill’s article on Whewell appeared in 1852 and contains perhaps his most concerted effort to clarify the state of moral debate in his time prior to the publication of *Utilitarianism* a decade later. It also engages more directly with rival views. There is every reason to think that it expresses Mill’s mature thought on the matters they address.

There is no significant difference in his account of utilitarian theory in those two works. The essay reveals that, over the course of the preceding four decades, Mill confidence in the utilitarian alternative had only strengthened, even as his particular version of it evolved in non-Benthamite directions. And it demonstrates that part of his confidence rested in the relative evaluation of alternatives. Where utilitarian morality offered a promising program for thinking about moral questions, the intuitive school seemed to suffer from ineradicable fundamental problems or the sort that drove them to become uneasy “hybrid” views.

The foregoing discussion reveals, I believe, the reason for Mill’s inattention to “free-floating evils” in his liberty principle. Free-floating evils just are the sort of evils that, to his mind, depend on claims that bottom out in mysterious or confused appeals to moral sense. They are the expression of the kind of thinking Mill so thoroughly rejected in the work of Whewell. Apparent cases of free-floating evils are to be handled just as he handles Whewell’s moral rules: either there is an element in them that can be cashed out in consequentialist terms, or (if not) they are the result of “feeble arguments.”

This result of course diminishes the liberty principle in some sense. It has been commonly treated as a neutral principle for a pluralistic liberal society, and many writers have pursued it precisely because of its promise in that regard. On my interpretation, while the core progressive argument of *On Liberty* should appeal to a very wide range of conceptions of the good, the liberty principle itself is constructed only with a view to consequentialist theories of morality that are able to divide all consequences according to the self- and other-regarding distinction. But there is, in fact, no real loss here, and some real potential gain. First, there is no reason to stop pursuing some version of the liberty

principle for contemporary liberal society. This, I take it, is just what Joel Feinberg has done. Second, while we should no longer cite Mill as an anti-moralist ancestor, my interpretation may allow us to approach a more comprehensive or systematic understanding of Mill's moral and political philosophy. It turns out that the attribution of anti-moralism was one of those matters that stood in the way of such an understanding. To try to see more clearly the view of one of the great moral and political philosophers strikes me as a valuable undertaking, one that might have unexpected payoffs, whatever the perceived immediate loss.

Section 5: Moralism and the Protection of Rights

In the final two sections I want to consider a secondary formulation of the anti-moralism thesis that is also incorrectly attributed to Mill. If moralistic interference is cashed out, as it sometimes seems to be, as social or legal interference that goes beyond the protection of a system of basic rights, then Mill clearly *allows* such interference. It is commonly argued or implied that Mill's anti-moralism is part and parcel of the intrinsic argument for individuality, which is commonly thought to justify the liberty principle. Individuality, as an important or essential component of human happiness, requires that individual liberty not be interfered with beyond certain basic limits (captured by the standard of "harm to others") and moralistic interference is thought to involve the transgression of these limits. This is important because philosophers like Joel Feinberg and Gerald Dworkin seem to suggest this formulation of the anti-moralist thesis, and others specifically connect it to Mill's liberty principle. Thus, Dworkin, following Feinberg, writes: "Of course the law enforces morality: The interesting question is what

parts of morality it ought to enforce... Feinberg's solution is that the law should protect only rights".¹⁰³ And Wendy Donner (to take an example) writes: "Mill's liberty principle is a principle of justice within his philosophy, protecting rights" and "the liberty principle can be seen to function not simply to protect a sphere of liberty... but also to clarify the limits beyond which morality has no business intruding."¹⁰⁴

It is commonly thought that ruling out social or legal moralism in this sense is one of Mill's aims in the construction of the liberty principle. This is because individuality cannot develop under the potentially comprehensive constraints of prevailing moral opinion (see, e.g. *OL*, I.14). Some moral constraints – against murder and theft, for instance – are vital to social life, but beyond such considerations moralistic interference ought to be limited. There is no doubt that one of his chief concerns in *On Liberty* is the social conformity that results from overbearing social pressure. He thus argues that it is important to maintain social conditions that allow for free speech and "experiments of living" to counteract conformism and social stagnation. And part of his overall argument in *On Liberty* is dedicated to the intrinsic argument for individuality, according to which government or social coercion will tend to stifle the development of individuality, which is an important component of human happiness. The thought, then, is that the liberty principle rules out interference beyond what is required for the protection of rights. But this, I will argue, completely neglects the jurisdictional nature of Mill's principle as I see it. And it flies in the face of his endorsement of legal and social coercion concerning matters that do not rise to the level of rights. Though Mill certainly resists those who

¹⁰³Gerald Dworkin, "Introduction," in *Morality, Harm, and the Law* (see note 1), p. 4.

¹⁰⁴Wendy Donner, "Autonomy, Tradition, and the Enforcement of Morality," in C.L. Ten, ed., *Mill's On Liberty: A Critical Guide* (New York: Cambridge University Press, 2008), pp. 161, 160.

would bring every part of life within the domain of social interference, this reading of the liberty principle is, I think, simply mistaken. Considerations about the intrinsic value of individuality (and the rights based on such considerations) appear not at the jurisdictional, but only at the justificatory stage. In the next sections I develop this point.

Section 6: Morality, Justice, and Rights

For Mill, morality is, as Donner notes, “concerned with the arena of rules of duty or obligation” to others (Donner, 163) and in *Utilitarianism* he defines them more specifically as those rules in the aforementioned arena which, when a person violates them, he “ought to be punished in some way or other for doing it” (CW X, 246). *Justice*, Mill then elaborates, “is a name for certain classes of moral rules, which concern the essentials of human well-being more nearly, and are therefore of more absolute obligation” (Ibid., 255). And *rights*, for Mill, are “the essence of the idea of justice” – they are the fruit of those rules that protect the “essentials of human well-being” and thus enjoy a greater “guarantee” – though they are not absolute – than other interests.

The scope of morality extends wider than the scope of justice, on this view, but it is not true that the liberty principle is limited by the scope of justice. Mill is explicit, in the third paragraph of Chapter IV of *On Liberty*:

...the fact of living in society renders it indispensable that each should be bound to observe a certain line of conduct towards the rest. This conduct consists, first, in not injuring the interests of one another; or rather certain interests, which, either by express legal provision or by tacit understanding, ought to be considered as rights; and secondly, in each person's bearing his share (to be fixed on some equitable principle) of the labors and sacrifices incurred for defending the society or its members from injury and molestation. These conditions society is justified in enforcing, at all costs to those who endeavor to withhold fulfilment. *Nor is this all that society may do.* The acts of an individual may be hurtful to others, or wanting in due consideration for their welfare, *without going the length of violating any of*

their constituted rights. The offender may then be justly punished by opinion, though not by law. As soon as any part of a person's conduct affects prejudicially the interests of others, society has jurisdiction over it, and the question whether the general welfare will or will not be promoted by interfering with it, becomes open to discussion. (CW XVIII, 276; emphasis added)

This passage states that there are ways of affecting others negatively which do not violate others' rights and yet might merit social sanction. It may be true that only rights-violations can justify legal coercion, but the liberty principle is expressly concerned with political and social coercion in all its forms: the liberty principle's scope is "to govern absolutely the dealings of society with the individual in the way of compulsion and control, whether the means used be physical force in the form of legal penalties, or the moral coercion of public opinion" (CW XVIII, 223).

David Brink also accepts the rights-based view of the liberty principle. As Brink writes:

Even though liberty is not intrinsically valuable, some liberties are necessary conditions to the realization of the dominant component in human welfare, namely, the exercise of rational faculties [i.e. individuality]. For this reason the liberties that are essential to the exercise of rational faculties are themselves dominant (though not intrinsic) goods and have the status of rights; they trump or defeat claims that we could promote lesser goods (e.g. pleasure or preference satisfaction) by interfering with these liberties. Recognizing a right to these liberties, therefore, is the way to maximize value.¹⁰⁵

The liberty principle, then, aims to protect certain liberties as rights because they are "necessary conditions to the realization of the dominant component in human welfare, namely, the exercise of rational faculties". He argues that because the exercise of individuality is an "essential" or "the dominant" component of happiness or well-being, must be protected as a right, which is to say it is "guaranteed" by society; this guarantee,

¹⁰⁵David Brink, "Mill's Deliberative Utilitarianism," *Philosophy and Public Affairs*, Vol. 21, No. 1 (Winter, 1992), 67-103. I don't mean to single out Brink. For another misleading use of this passage, see Daniel Jacobson, "Mill on Liberty, Speech, and the Free Society," *Philosophy and Public Affairs*, 297 and 302.

in turn, requires that the “basic liberties” necessary for the exercise of individuality be treated as rights, which is to say that they also are guaranteed by society. Alan Ryan agrees, concluding “we have something close to an absolute principle” – the liberty principle – protecting those basic liberties. Thus, because the exercise of our rational faculties is so fundamental to human happiness, the liberties necessary for the exercise of those rational faculties have the status of rights; society must not interfere with them. And this, they think, is the heart of the liberty principle.

But what about those matters in which some sanction or enforcement is justified because some action “may be hurtful to others... without going the length of violating any one of their constituted rights”? Having argued that the liberty principle is all about protecting certain basic liberties as rights, Brink then proposes that we must supplement the liberty principle with some other interference principle: “The harm [or liberty] principle is not the sole legitimate ground for restricting liberty; various forms of social welfare legislation are acceptable” (Brink, 91). But this is simply to admit that one has not really got hold of Mill’s view, given both the passage from the third paragraph of Chapter IV and Mill’s claim that the liberty principle should “govern absolutely the dealings of society with the individual in the way of compulsion and control...”

Consider this example from an essay on Comte in 1865, following the publication of *On Liberty* and other works in which he develops his jurisdictional thinking:

...we agree with him in the opinion, that the principal hygienic precepts should be inculcated, not solely or principally as maxims of prudence, but as a matter of duty to others, since by squandering our health we disable ourselves from rendering to our fellow-creatures the services to which they are entitled. As M. Comte truly says, the prudential motive is by no means fully sufficient for the purpose, even physicians often disregarding their own precepts. The personal penalties of neglect of health are commonly distant, as well as more or less uncertain, and require the additional and more immediate sanction of moral responsibility. M. Comte,

therefore, in this instance, is, we conceive, right in principle; though we have not the smallest doubt that he would have gone into extreme exaggeration in practice, and would have wholly ignored the legitimate liberty of the individual to judge for himself respecting his own bodily conditions, with due relation to the sufficiency of his means of knowledge, and taking the responsibility of the result. (CW X, 340)

Surely, interference in the personal health of individuals is just the sort of interference typically thought to be ruled out by the liberty principle according to the second formulation, and in line with the kinds of examples adduced by Dworkin. But Mill makes three interesting claims in this passage. First, he makes clear that social authority of some sort may *rightfully* interfere with individual liberty to encourage personal health, but only on certain grounds. Second, he worries that someone of Comte's dispositions would fail to recognize the jurisdictional limits on this interference, allowing considerations of an individual's "own bodily conditions" to figure in the justification of that interference. Third, he relates that jurisdictional limit to "the sufficiency of [the individual's] means of knowledge concerning his own health as it relates to his own good. The upshots of this are (1) a rejection of the rights-based view of the liberty principle (and the associated attribution of "anti-moralism" to Mill on the second formulation) and (2) a confirmation of the expertise-jurisdictional account of the "legitimate liberty of the individual" expressed by the liberty principle.

The passage from the third paragraph of Chapter IV not only is at odds with the rights-based view, but emphasizes the jurisdictional nature of the liberty principle, and – consistent with the passage from the essay on Comte – clearly affords jurisdiction over "conduct [that] affects prejudicially the interests of others" but which does not rise to a rights-violation (an infringement upon one of the "essentials of human well-being) to

social authority.¹⁰⁶ The question of how to interfere – a justificatory matter – then “becomes open to discussion,” and it is only then that Mill distinguishes (and only by degree) between those interests that require legal sanction and those that require more informal social sanction. The passage from Chapter IV states that rights-violations considerations are *not* necessary for social authority to intervene. But, then, given that “harm to others” is the jurisdictional trigger of the liberty principle (granting control over certain matters to social authority), that passage implies that we should not read “harm” only as involving a right-violation; that would be too narrow to capture the true scope of social authority’s legitimate control. Certainly, Mill recommends, with regard to lesser ways of affecting others negatively, that legal sanction would not be justified. But this speaks to the question of how best to interfere, and not to the question of whether social authority has jurisdiction over the matter.

In his *Principles*, Mill clearly allows government interference in matters that do not threaten one’s rights:

But enough has been said to show that the admitted functions of government embrace a much wider field than can easily be included within the ring-fence of any restrictive definition, and that it is hardly possible to find any ground of justification common to them all, except the comprehensive one of general expediency; nor to limit the interference of government by any universal rule, save the simple and vague one, that it should never be admitted but when the case of expediency is strong. (CW III, 804)

We must thus tease out Mill’s attempt to restrict the rightful province of government attention from his recommendations about when interference, within that province, would in fact be justified (and of what kind of interference is called for). Rights concern just those social matters in which interference is, as a justificatory matter, most necessary. If

¹⁰⁶We ought to focus on the importance of *to others* and not try to identify *harm* with a certain caliber of effect. Mill repeatedly uses “harm” as a companion word for “good,” as in an 1835 review: “Morality... consists in doing good and refraining from harm.” (CW X, 59).

the relevant considerations in some matter concern only my own good, then Mill argues that as long as I am a competent judge of my own good, I have jurisdiction over my actions. Government or social authority cannot rightfully interfere, and any interference would be wrong, in that sense. By contrast, in my own rightful domain, I could do no wrong, in that same sense, (even if what I decide to do has sub-optimal actual consequences for me, and so is bad). In sum, with regard to the social consequences of our actions: (1) he has no *in principle* objection to social coercion in light of prevailing moral opinion concerning matters that do not rise to the level of rights-violations and, as we saw before, (2) interference with harmless wrongs is not on his mind, even if his principle rules it out, because the category of harmless wrongs is empty for him.

Section 7: Conclusion

In this chapter, we have considered in detail two formulations of the anti-moralism thesis, and found in both cases that they are not properly attributed to Mill. I will not here summarize all of the arguments, but I would like to conclude by re-emphasizing two points. First, my general argument has been an interpretive one, concerning Mill's views, and they have no direct bearing on the plausibility or value of pursuing either anti-moralist formulation, except insofar as those formulations are thought to gain strength from being situated within a strict Millian framework. Second, I think, nonetheless, that understanding Mill's overall moral and political philosophy requires just this sort of attention to what he actually says, and not to the needs of contemporary debates. I am hopeful that this will, in fact, strengthen Mill's position, with regard to the fact that so many commentators have taken some of his central moral and

political commitments to be incompatible. I think there is reason to suspect that the connections between Mill's various commitments have yet to be fully appreciated.

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